

SESSION LAWS
OF
HAWAII
PASSED BY THE
TWENTY-SIXTH STATE LEGISLATURE
STATE OF HAWAII

REGULAR SESSION
2011

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Adjourned sine die on Thursday, May 5, 2011

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State of Hawaii
Honolulu, Hawaii

PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 2011.

The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

Statutory material that is being repealed is either bracketed or bracketed and stricken. New material is indicated by underscoring. As authorized by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Charlotte A. Carter-Yamauchi
Revisor of Statutes

Honolulu, Hawaii
July 15, 2011

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Daniel K. Akaka

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REGULAR SESSION 2011**

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²Appointed to seat vacated by Russell S. Kokubun.

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²Appointed to seat vacated by Maile S. Shimabukuro.

D – Democrats	43
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**Session Laws of Hawaii
Passed By The
Twenty-Sixth State Legislature
Regular Session
2011**

ACT 1

S.B. NO. 232

A Bill for an Act Relating to Civil Unions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The intent of this measure is to recognize civil unions in Hawaii. By establishing the status of civil unions in this State, it is not the legislature's intent to revise the definition or eligibility requirements of marriage under chapter 572, Hawaii Revised Statutes.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CIVIL UNIONS**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Agent” means the person or persons appointed as an agent or agents by the department of health pursuant to section 572-5.

“Civil union” means a union between two individuals established pursuant to this chapter.

“Partner” means an individual who is a party to a civil union established pursuant to this chapter.

§ -2 **Eligibility to enter into a civil union.** A person shall be eligible to enter into a civil union only if the person is:

- (1) Not a partner in another civil union, a spouse in a marriage, or a party to a reciprocal beneficiary relationship pursuant to chapter 572C;
- (2) At least eighteen years of age; and
- (3) Not related to the other proposed partner in the civil union, as provided in section -3.

§ -3 **Civil unions void; when.** A civil union shall be void between the following persons: parent and child, grandparent and grandchild, two siblings, aunt and nephew, aunt and niece, uncle and nephew, uncle and niece, and per-

ACT 1

sons who stand in relation to each other as ancestor and descendant of any degree whatsoever.

§ -4 Solemnization; license to perform; refusal to join persons in a civil union. (a) A civil union shall become valid only upon completion of a solemnization by a person licensed in accordance with this section.

(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any ordained or licensed member of the clergy may solemnize a civil union. Solemnization may be entirely secular or may be performed according to the forms and usages of any religious denomination in this State. Nothing in this section shall be construed to require any person authorized to perform solemnizations of marriages or civil unions to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine or other penalty for the failure or refusal.

(c) Nothing in this section shall be construed to require any person authorized to perform solemnizations pursuant to chapter 572 or civil unions pursuant to this chapter to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine or other penalty for the failure or refusal.

(d) No agent may solemnize a civil union; nor may any assistant or deputy of the agent solemnize a civil union.

(e) No person shall perform the solemnization of a civil union without first having obtained a license from the department of health. The department of health shall issue licenses to solemnize civil unions in the same manner as it issues licenses pursuant to chapter 572. The department of health may revoke or suspend a license to solemnize civil unions. Any penalties or fines that may be levied or assessed by the department of health for violation of chapter 572 shall apply equally to a person licensed to solemnize civil unions.

§ -5 Applicants for civil union; license required; limitations. (a) No persons may be joined in a civil union in this State unless both partners have:

- (1) Met the requirements of section -2;
- (2) Complied with section -6 and, if applicable, section -7; and
- (3) Been issued a license by an agent in the judicial circuit in which a civil union is to be solemnized or in which either person resides, which license shall bear the certification of the agent that the persons named therein have met the requirements of section -2 and have complied with section -6 and, if applicable, section -7.

(b) The license, when certified by the agent, is sufficient authority for any person authorized to perform a civil union solemnization in this State to join the persons in a civil union; provided that the solemnization is performed not more than thirty days after the date of issuance. The license shall become void thirty days after issuance.

§ -6 Application for license for persons who wish to enter into a civil union; fee. (a) No license for a civil union may be issued by an agent until both applicants have appeared before the agent and applied for the license. The application for the license shall be completed in its entirety, dated, signed, and sworn to by each applicant and shall state each applicant's full name, date of birth, birthplace, residence, social security number, whether single, widowed, or divorced, and whether the applicant is under the supervision or control of a conservator or guardian. If the application is signed and sworn to by the applicants on differ-

ent dates, the earlier date shall be deemed the date of the application. The agent shall issue a copy of this chapter to any person applying for a license.

(b) The fee for a license to enter into a civil union shall be an amount equal to the amount prescribed in section 572-5, and all amounts collected by the agent as application fees under this chapter shall be retained or remitted and apportioned in the same manner as prescribed in section 572-5.

§ -7 Persons under control of conservator or guardian. (a) No civil union license may be issued to any applicant under the supervision or control of a conservator or guardian, appointed in accordance with chapter 560, unless the written consent of the conservator or guardian is signed, notarized, and filed with the agent.

(b) Any person who enters into a civil union without the consent provided for in subsection (a) shall acquire no rights by that civil union in the property of any person who was under the control or supervision of a conservator or guardian at the time the civil union was entered into.

§ -8 Record of solemnization; reported by whom; affidavit; evidentiary weight of certificate or affidavit. (a) Each person who solemnizes a civil union shall certify upon the civil union license certificate the fact, time, and place of the solemnization of the civil union and return the certificate to the agent within three business days following the solemnization of the civil union, or as may otherwise be prescribed by the department of health.

(b) If any person who has solemnized a civil union fails to return the certificate to the agent as required under subsection (a), the partners joined in a civil union may provide the agent with a notarized affidavit attesting to the fact that they were joined in a civil union and stating the date and place of the solemnization of the civil union. Upon the receipt of that affidavit by the agent, the civil union of the partners shall be deemed to be valid as of the date of the solemnization of the civil union stated in the affidavit.

(c) The certificate required by subsection (a) or an affidavit received pursuant to subsection (b) shall be prima facie evidence of the facts stated therein.

§ -9 Benefits, protections, and responsibilities. Partners to a civil union lawfully entered into pursuant to this chapter shall have all the same rights, benefits, protections, and responsibilities under law, whether derived from statutes, administrative rules, court decisions, the common law, or any other source of civil law, as are granted to those who contract, obtain a license, and are solemnized pursuant to chapter 572.

§ -10 Civil unions performed in other jurisdictions. All unions entered into in other jurisdictions between two individuals not recognized under section 572-3 shall be recognized as civil unions; provided that the relationship meets the eligibility requirements of this chapter, has been entered into in accordance with the laws of that jurisdiction, and can be documented.

§ -11 References and inclusions. A party to a civil union shall be included in any definition or use of the terms “spouse”, “family”, “immediate family”, “dependent”, “next of kin”, and other terms that denote the spousal relationship, as those terms are used throughout the laws of the State.”

SECTION 3. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

ACT 1

“§231- Effect of civil union. All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were “husband and wife”, “spouses”, or other terms that describe persons in a legal marital relationship.”

SECTION 4. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Effect of civil union. All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were “husband and wife”, “spouses”, or other terms that describe persons in a legal marital relationship.”

SECTION 5. Chapter 236D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§236D- Effect of civil union. All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were “husband and wife”, “spouses”, or other terms that describe persons in a legal marital relationship.”

SECTION 6. Section 580-1, Hawaii Revised Statutes, is amended to read as follows:

“§580-1 Jurisdiction; hearing. Exclusive original jurisdiction in matters of annulment, divorce, and separation, subject to section 603-37 as to change of venue, and subject also to appeal according to law, is conferred upon the family court of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor. No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least six months next preceding the application therefor. A person who may be residing on any military or federal base, installation, or reservation within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section. The family court of each circuit shall have jurisdiction over all proceedings relating to the annulment, divorce, and separation of civil unions entered into in this State in the same manner as marriages.”

SECTION 7. Section 572-1.6, Hawaii Revised Statutes, is repealed.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on January 1, 2012, provided sections 3, 4, and 5 of this Act shall apply to taxable years beginning after December 31, 2011.

(Approved February 23, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 2

H.B. NO. 1077

A Bill for an Act Relating to Employment Security Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 2, passed during the regular session of 2010, assisted employers by providing relief from a scheduled increase in the unemployment insurance contribution rates for the 2010 and 2011 calendar years. This action, however, contributed to the insolvency of the unemployment trust fund beginning in December 2010 and required the State of Hawaii to borrow moneys from the federal government to pay unemployment insurance benefits.

The employment and training fund is the only cost effective mechanism available to collect an assessment from employers. It is for this reason that the current law must be amended to include the payment of interest on Title XII loans advanced under the provisions of Section 1202(b) of the Social Security Act, as amended, as one of the uses of the employment and training fund and to expand the assessment on all employers. The assessment must be included in the notices that are mailed out to the employers in early March of each year in order for the State to make timely payment on the interest due.

The purpose of this Act is to provide for a mechanism for collecting special assessments from employers in a fair and equitable manner to pay for interest on unpaid Social Security Act, Title XII loans that are due on September 30, 2011.

SECTION 2. Section 383-128, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The moneys in the employment and training fund may be used for funding:

- (1) The operation of the state employment service for which no federal funds have been allocated;
- (2) Business-specific training programs to create a more diversified job base and to carry out the purposes of the new industry training program pursuant to section 394-8;
- (3) Industry or employer-specific training programs where there are critical skill shortages in high growth occupational or industry areas;
- (4) Training and retraining programs to assist workers who have become recently unemployed or are likely to be unemployed;
- (5) Programs to assist residents who do not otherwise qualify for federal or state job training programs to overcome employment barriers; ~~and~~
- (6) Training programs to provide job-specific skills for individuals in need of assistance to improve career employment prospects[-]; and

ACT 3

- (7) The payment of interest due on Title XII advances made under the provisions of Section 1202(b) of the Social Security Act, as amended, to the unemployment compensation fund.”

SECTION 3. Section 383-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to contributions determined by section 383-68, every employer, except an employer who has selected an alternative method of financing liability for unemployment compensation benefits pursuant to section 383-62, ~~[or an employer who has been assigned a minimum rate of zero per cent or the maximum rate of five and four-tenths per cent in accordance with section 383-68;]~~ shall be subject to an employment and training fund assessment at a rate of .01 per cent of taxable wages as specified in section 383-61. If interest is due on a Title XII advance under the provisions of Section 1202(b) of the Social Security Act, as amended, the employment and training fund assessment shall be increased to pay the interest due. The director shall have the discretion to determine the amount of the increase in the employment and training assessment rate for the calendar year 2011. The increase in the employment and training assessment rate shall be in increments of .01 per cent. Notwithstanding any provisions of this chapter to the contrary, if interest payments on a Title XII advance are subsequently waived by federal law, the aggregate amount of interest payments collected shall constitute the total employment and training assessments payable by employers for the calendar year 2012 only, and no employment and training assessment shall be collected from any employer in that year and no refund shall be paid retroactively to any employer based on the federal waiver of interest payments.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval and shall apply retroactively to January 1, 2011; provided that on January 1, 2012, this Act shall be repealed and sections 383-128 and 383-129, Hawaii Revised Statutes, shall be reenacted in the form in which they read on December 31, 2010.

(Approved February 23, 2011.)

ACT 3

S.B. NO. 1286

A Bill for an Act Relating to the Budget.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to amend Act 162, Session Laws of Hawaii 2009, as amended by Act 180, Session Laws of Hawaii 2010, to:

- (1) Appropriate additional general funds for the office of the governor (GOV 100) and the office of the lieutenant governor (LTG 100) for fiscal year 2010-2011, to provide full-year staffing for the office of the governor and the office of the lieutenant governor to properly exercise statewide statutory and constitutional obligations of their offices;

- (2) Appropriate additional general funds for the department of business, economic development, and tourism (BED 142) for fiscal year 2010-2011, to provide funds and positions for the deputy director and deputy director's secretary;
- (3) Provide general fund positions for the department of defense (DEF 110) for fiscal year 2010-2011, for the deputy adjutant general and deputy adjutant general's secretary; and
- (4) Provide a general fund position for the department of labor and industrial relations (LBR 902) for fiscal year 2010-2011, for the deputy director's secretary.

The immediate passage of this appropriation is necessary to meet fiscal year 2010-2011 program requirements for the office of the governor, office of the lieutenant governor, department of business, economic development, and tourism, department of defense, and department of labor and industrial relations.

SECTION 3. Act 162, Session Laws of Hawaii 2009, as amended by Act 180, Session Laws of Hawaii 2010, is amended by amending item A.3 in section 3 to read as follows:

"A. ECONOMIC DEVELOPMENT

3. BED142 – GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT		30.00*	[19.00*]
			21.00*
OPERATING	BED	1,874,560 A	[1,115,511 A] 1,174,463 A"

SECTION 4. Act 162, Session Laws of Hawaii 2009, as amended by Act 180, Session Laws of Hawaii 2010, is amended by amending item B.16 in section 3 to read as follows:

"B. EMPLOYMENT

16. LBR902 – GENERAL ADMINISTRATION			
OPERATING		25.04*	[18.52*]
			19.52*
	LBR	1,379,475 A	961,495 A
		35.48*	27.06*
	LBR	3,228,809 N	2,609,604 N"

SECTION 5. Act 162, Session Laws of Hawaii 2009, as amended by Act 180, Session Laws of Hawaii 2010, is amended by amending item I.22 in section 3 to read as follows:

"I. PUBLIC SAFETY

22. DEF110 – AMELIORATION OF PHYSICAL DISASTERS		125.80*	[104.30*]
			106.30*
OPERATING	DEF	11,200,254 A	9,622,549 A
		81.70*	83.95*
	DEF	74,207,982 N	83,353,987 N
	DEF	464,458 S	464,458 S
	DEF	12,019,595 U	11,989,279 U
INVESTMENT CAPITAL	AGS	7,206,000 C	3,861,000 C
	DEF	2,335,000 C	840,000 C
	AGS	1,000,000 N	925,000 N
	DEF	7,225,000 N	2,015,000 N"

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SECTION 6. Act 162, Session Laws of Hawaii 2009, as amended by Act 180, Session Laws of Hawaii 2010, is amended by amending items K.1 and K.2 in section 3 to read as follows:

"K. GOVERNMENT-WIDE SUPPORT

1. GOV100 – OFFICE OF THE GOVERNOR			
OPERATING	GOV	31.00 * 3,176,357 A	27.00 * [1,683,915 A] <u>2,747,631 A</u> <u>29,050 T</u> 1,000 C
INVESTMENT CAPITAL	GOV	1,000 C	
2. LTG100 – OFFICE OF THE LIEUTENANT GOVERNOR			
OPERATING	LTG	3.00 * 645,918 A	3.00 * [421,017 A] <u>722,099 A</u> ^b

SECTION 7. Part VII, Act 162, Session Laws of Hawaii 2009, as amended by Act 180, Session Laws of Hawaii 2010, is amended as follows:

(1) By amending section 127 to read:

“SECTION 127. Except as otherwise provided, the appropriation for the office of the governor (GOV 100) shall be expended at the discretion of the governor; provided further that for fiscal year 2010-2011, the outgoing administration shall not expend or encumber more than \$1,236,780 and the incoming administration shall not expend or encumber more than [~~\$447,135~~] \$1,510,851 of the general fund appropriation; provided further that the incoming administration shall not expend more than \$50,000 for the purposes of gubernatorial transition; and provided further that the office of the governor shall submit a report detailing the uses of gubernatorial transition funds to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(2) By amending section 128 to read:

“SECTION 128. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100) shall be expended at the discretion of the lieutenant governor; provided further that for fiscal year 2010-2011, the outgoing administration shall not expend or encumber more than \$300,508 and the incoming administration shall not expend or encumber more than [~~\$120,509~~] \$421,591 of the general fund appropriation.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved February 23, 2011.)

ACT 4

H.B. NO. 827

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Auditor, the Legislative Reference Bureau, the Ombudsman, and the Ethics Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,377,244 or so much thereof as may be necessary to the senate for the following expenses:

- (1) The sum of \$6,477,244 for defraying any and all session and nonsession expenses of the senate up to and including June 30, 2012, including the 2011 regular session, twenty-sixth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2011 and 2012 regular sessions; and
- (2) The sum of \$900,000 for defraying the expenses of the legislative information system for cost items such as hardware, software, consultants, installation, materials, supplies, and other related costs associated with the legislative information system that have been or will be incurred.

The sum appropriated in this section shall be expended by the senate.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,481,787 or so much thereof as may be necessary to the house of representatives for the following expenses:

- (1) The sum of \$9,793,363 for defraying any and all session and nonsession expenses of the house of representatives up to and including June 30, 2012, including the 2011 regular session, twenty-sixth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2011 and 2012 regular sessions; and
- (2) The sum of \$688,424 for defraying the expenses of the legislative information system for cost items such as hardware, software, consultants, installation, materials, supplies, and other related costs associated with the legislative information system that have been or will be incurred.

The sum appropriated in this section shall be expended by the house of representatives.

SECTION 3. Payment of expenses of the senate during the interim between the 2011 and 2012 regular sessions shall be made only with the approval of the president of the senate, and payment of expenses of the house of representatives during the interim between the 2011 and 2012 regular sessions shall be made only with the approval of the speaker of the house of representatives.

SECTION 4. Before January 18, 2012, the senate and the house of representatives shall each have their accounts audited, and a full report of the respective audits shall be presented to the senate and to the house of representatives convening on January 18, 2012.

SECTION 5. Unless otherwise prescribed by law, the expenses of any member of the legislature while traveling abroad on official business of the legislature shall be \$145 a day as authorized by the president of the senate and the speaker of the house of representatives.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,663,849 or so much thereof as may be necessary to the office of the auditor for the following expenses:

- (1) The sum of \$2,513,849 for defraying the expenses of the office of the auditor during fiscal year 2011-2012; and
- (2) The sum of \$150,000 during fiscal year 2011-2012 for:
 - (A) Performing special studies;

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- (B) Improving capabilities for planning, programming, and budgeting;
- (C) Fulfilling other special requests made of the auditor by the legislature or jointly by the president of the senate and the speaker of the house of representatives;
- (D) Legislative studies and contractual services for those studies; and
- (E) Such other purposes as may be determined by the joint action of the president of the senate and the speaker of the house of representatives.

The sum appropriated in this section shall be expended by the auditor.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,550,828 or so much thereof as may be necessary to the office of the auditor during fiscal year 2011-2012 to be deposited into the audit revolving fund established pursuant to section 23-3.6, Hawaii Revised Statutes.

SECTION 8. There is appropriated out of the audit revolving fund the sum of \$6,000,000 or so much thereof as may be necessary to the office of the auditor during fiscal year 2011-2012 for the office to conduct or complete its audit functions as provided by law.

The sum appropriated in this section shall be expended by the auditor.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,033,970 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 2011-2012, including equipment relating to computer systems programming and operations.

The sum appropriated in this section shall be expended by the legislative reference bureau.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,017,875 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2011-2012.

The sum appropriated in this section shall be expended by the ombudsman.

SECTION 11. There is appropriated out of the general revenue of the State of Hawaii the sum of \$849,531 or so much thereof as may be necessary to the office of the state ethics commission for defraying the expenses of the office during fiscal year 2011-2012.

The sum appropriated in this section shall be expended by the ethics commission.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary, for defraying the cost of the legislative broadcasting program:

- (1) \$87,500 to the senate; and
- (2) \$87,500 to the house of representatives.

This appropriation shall be used to pay for the production and distribution of television broadcasts of legislative proceedings.

SECTION 13. Except for moneys in the audit revolving fund, as of the close of business on June 30, 2012, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 14. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 15. This Act shall take effect upon its approval.

(Approved March 10, 2011.)

ACT 5

S.B. NO. 8

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The purpose of this Act is to implement the constitutional amendments to article X, section 2, of the Hawaii State Constitution that were adopted by the legislature and ratified by the electorate in the 2010 general election, by statutorily requiring the members of the board of education to be nominated and, with the advice and consent of the senate, appointed by the governor.

PART II

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding seven new sections to be appropriately designated and to read as follows:

“§302A-A Board of education; members; student and military representative. (a) The board shall consist of nine members as follows:

- (1) One member from the county of Hawaii;
- (2) One member from the county of Maui;
- (3) One member from the county of Kauai;
- (4) Three members from the city and county of Honolulu; and
- (5) Three at-large members; provided that the governor shall select an at-large member as the chairperson.

The members shall be appointed by the governor, with the advice and consent of the senate. The governor may remove or suspend for cause any member of the board.

(b) Pursuant to article XVIII, section 12, of the Hawaii State Constitution, the period of transition from the elected to the appointed board shall be as determined in section 21 of Act , Session Laws of Hawaii 2011.

(c) The members of the board shall serve without pay but shall be entitled to reimbursement for necessary expenses, including travel and board and lodging expenses, while attending meetings of the board or when actually engaged in business relating to the work of the board.

(d) Pursuant to section 302A-447, the state student council shall select a nonvoting public high school student representative to the board.

(e) Pursuant to section 302A-1101(c), the board shall invite the senior military commander in Hawaii to appoint a nonvoting military representative to the board.

§302A-B Board of education; eligibility. Except as otherwise provided by law, state officers shall be eligible for appointment and membership to the board. No person shall be eligible for appointment to the board:

- (1) Under section 302A-A(a)(1) through (4) unless the person is a resident of the county from which the person is to be appointed; or
- (2) Under section 302A-A(a)(5) unless the person is a resident of the State.

§302A-C Board of education; terms. (a) The governor shall set the terms of the members initially appointed to the board under section 21 of Act _____, Session Laws of Hawaii 2011, as follows:

- (1) Three members shall serve one-year terms;
- (2) Three members shall serve two-year terms; and
- (3) Three members, including the chairperson, shall serve three-year terms.

(b) The term of each member shall be three years, except as provided for in the initial appointment in subsection (a). Members shall serve no more than three consecutive three-year terms; provided that the members who are initially appointed to terms of two years or less pursuant to subsection (a) may be reappointed to three ensuing consecutive three-year terms. If a member is nominated to a second or subsequent consecutive term, the senate shall consider the question of whether to reconfirm the member at least one hundred twenty days prior to the expiration of the member's immediately preceding term; provided that if the senate has not taken final action to reconfirm the member by the one hundred twenty-day deadline, the member shall continue to serve until the senate takes final action on the reconfirmation.

(c) The term of the student representative shall be one year. The student representative may be selected for one additional consecutive term; provided that the student representative shall be a student at the time of selection and shall be a student for the majority of that term.

(d) Every member may serve beyond the expiration date of the member's term of appointment until the member's successor has been appointed by the governor and confirmed by the senate in accordance with sections 302A-A, 302A-F, and 302A-G.

§302A-D Board of education; organization; quorum; meetings. (a) The governor shall select a chairperson of the board; provided that the chairperson shall be selected from among the at-large members. The board shall select a vice chairperson from among its members, and the vice chairperson shall serve as interim chairperson in the event the chairperson's seat becomes vacant.

(b) A majority of all the voting members to which the board is entitled shall constitute a quorum to conduct business. At any time the board has fewer than five voting members, three voting members of the board shall constitute a quorum to conduct business and the concurrence of at least three voting members shall be necessary to make any action of the board valid.

(c) Notwithstanding chapter 92, from the convening of the legislature in regular session to adjournment sine die of each regular session, and during each special session of the legislature, the board may file any notice that specifies only legislation or legislation-related agenda items, no fewer than two calendar days before the meeting.

§302A-E Board of education; vacancies. (a) The governor shall notify the senate in writing within ten days of:

- (1) Removing a member of the board; or
- (2) Receiving notification that a member of the board is resigning or has died;

provided that any vacancy shall be filled by appointment by the governor, with the advice and consent of the senate, in accordance with sections 302A-A , 302A-B, 302A-C, 302A-F, and 302A-G.

(b) Where the chairperson position becomes vacant, the governor may nominate a sitting member of the board to the chairperson position in accordance with subsection (a) and shall fill any resulting vacancy in accordance with subsection (a).

§302A-F Board of education; qualifications; administration priorities. (a) Upon the nomination of any board member, the governor shall provide written documentation articulating the administration's goals and priorities with respect to the formation of a highly-functioning, well-balanced board, and describing the nominee's qualifications.

(b) Each nominee shall meet the following minimum qualifications:

- (1) Record of integrity, civic virtue, and high ethical standards. Each nominee shall demonstrate integrity, civic virtue, and high ethical standards and be willing to hold fellow board members to the same;
- (2) Availability for constructive engagement. Each nominee shall commit to being a conscientious and attentive board member;
- (3) Knowledge of best practices. Each nominee shall have an understanding of best practices in educational governance or shall be willing to be trained in such; and
- (4) Commitment to educational leadership. Each nominee shall have a clear understanding of the board's role in developing and protecting a clear, long-term strategic vision for Hawaii's public schools, and shall understand the need to hold the superintendent of education accountable for making consistent progress toward that vision.

(c) Each nominee shall ideally meet the following recommended qualifications:

- (1) Understanding of collective bargaining. Each nominee should demonstrate an understanding of the collective bargaining process and an ability to participate in that process on behalf of the board free from any conflict of interest;
- (2) Experience governing complex organizations. Each nominee should possess experience with complex organizations and a proven ability to function productively within them;
- (3) Collaborative leadership ability. Each nominee should have substantial leadership experience that ideally illustrates the nominee's ability to function among diverse colleagues as an effective team member, with the ability to articulate, understand, and help shape consensus surrounding board policies; and
- (4) Commitment to education. Each nominee's record should demonstrate a deep and abiding interest in education and a dedication to the social, academic, and character development of young people.

§302A-G Board of education; senate advice and consent. In determining whether to confirm the governor's nominees to the board, the senate shall consider the combination of abilities, breadth of experiences, and characteristics

of the board, as a whole, that will best serve the diverse interests and needs of the students and their families, the education system in Hawaii from early childhood through higher education, and the public libraries. Such considerations shall include but not be limited to reflecting the diversity of the student population, geographical representation, and a broad representation of education-related stakeholders.”

PART III

SECTION 3. Section 11-157, Hawaii Revised Statutes, is amended to read as follows:

“§11-157 In case of tie. In case of the failure of an election by reason of the equality of vote between two or more candidates, the tie shall be decided by the chief election officer or county clerk in the case of county elections in accordance with the following procedure:

- (1) In the case of an election involving a seat for the senate, house of representatives, [~~board of education,~~] or county council where only voters within a specified district are allowed to cast a vote, the winner shall be declared as follows:
 - (A) For each precinct in the affected district, an election rate point shall be calculated by dividing the total voter turnout in that precinct by the total voter turnout in the district. For the purpose of this subparagraph, the absentee votes cast for the affected district shall be treated as a precinct. The election rate point shall be calculated by dividing the total absentee votes cast for the affected district by the total voter turnout in that district. All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth[-];
 - (B) The candidate with the highest number of votes in a precinct shall be allocated the election rate point calculated under subparagraph (A) for that precinct. In the event that two or more persons are tied in receiving the highest number of votes for that precinct, the election rate point shall be equally apportioned among those candidates involved in that precinct tie[-];
 - (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as provided under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner[-]; and
 - (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the precinct with the largest voter turnout shall be declared the winner[-];
- (2) In the case of an election involving a federal office or an elective office where the voters in the entire State or in an entire county are allowed to cast a vote, the winner shall be declared as follows:
 - (A) For each representative district in the State or county, as the case may be, an election rate point shall be calculated by dividing the total voter turnout in that representative district by the total voter turnout in the [~~state,~~ State, county, or federal office district, as the case may be; provided that for purposes of this subparagraph:

- (i) The absentee votes cast for a statewide, countywide, or federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total absentee votes cast for the statewide, countywide, or federal office by the total voter turnout in the state, county, or federal office district, as the case may be[-]; and
- (ii) The overseas votes cast for any election in the State for a federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total number of overseas votes cast for the affected federal office by the total voter turnout in the affected federal office district. The term “overseas votes” means those votes cast by absentee ballots for a presidential election as provided in section 15-3.

All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth[-];

- (B) The candidate with the highest number of votes in a representative district shall be allocated the election rate point calculated under subparagraph (A) for that district. In the event that two or more persons are tied in receiving the highest number of votes for that district, the election rate point shall be equally apportioned among those candidates involved in that district tie[-];
- (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as prescribed under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the election rate point total shall be declared the winner[-]; and
- (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the representative district with the largest voter turnout shall be declared the winner.”

SECTION 4. Section 11-331, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For purposes of this part, whenever a report is required to be filed with the commission, “filed” means that a report shall be filed with the commission’s electronic filing system by the date and time specified for the filing of the report by:

- (1) The candidate or candidate committee of a candidate who is seeking election to the:
 - (A) Office of governor;
 - (B) Office of lieutenant governor;
 - (C) Office of mayor;
 - (D) Office of prosecuting attorney;
 - (E) County council;
 - (F) Senate;
 - (G) House of representatives; or
 - (H) Office of Hawaiian affairs; or
 - ~~(I) Board of education; or~~
- (2) A noncandidate committee required to be registered with the commission pursuant to section 11-323.”

ACT 5

SECTION 5. Section 11-423, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) From January 1 of the year of any primary, special, or general election, the aggregate expenditures for each election by a candidate who voluntarily agrees to limit campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone, all treasurers, the candidate committee, and noncandidate committees on the candidate’s behalf, shall not exceed the following amounts expressed, respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor — \$2.50;
- (2) For the office of lieutenant governor — \$1.40;
- (3) For the office of mayor — \$2.00;
- (4) For the offices of state senator, state representative, and county council member — \$1.40; and
- (5) For ~~[the board of education and]~~ all other offices — 20 cents.”

SECTION 6. Section 11-425, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For ~~[the board of education and]~~ all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.”

SECTION 7. Section 12-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Nomination papers for candidates for members of Congress, governor, and lieutenant governor~~], and the board of education]~~ shall be signed by not less than twenty-five registered voters of the State or of the Congressional district ~~[or school board district]~~ from which the candidates are running in the case of candidates for the United States House of Representatives ~~[or for the board of education].~~”

SECTION 8. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of this section, “member” means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the board of education, the local school board of any charter school established under chapter 302B, council, authority, committee, or commission, established by law or elected to ~~[the board of education, or]~~ the board of trustees of the employees’ retirement system under section 88-24, or the corporation board of the Hawaii health systems corporation under section 323F-3 and its regional system boards under section 323F-3.5; provided that “member” shall not include any person elected to serve on a board or commission in accordance with chapter 11 ~~[other than a person elected to serve on the board of education].~~”

SECTION 9. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required

- by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
 - (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
 - (4) Positions filled by the legislature or by either house or any committee thereof;
 - (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
 - (6) Positions filled by popular vote;
 - (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
 - (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
 - (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
 - (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
 - (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administra-

- tive, professional, and technical personnel not engaged in instructional work;
- (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
 - (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
 - (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
 - (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
 - (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
 - (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
 - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the Hawaii State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
 - (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
 - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
 - (19) Household employees at the official residence of the president of the University of Hawaii;
 - (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection,

and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;

- (21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- ~~[(24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;¹~~
- ~~(25)]~~ (24) Sheriff, first deputy sheriff, and second deputy sheriff;
- ~~[(26)]~~ (25) A gender and other fairness coordinator hired by the judiciary; and
- ~~[(27)]~~ (26) Positions in the Hawaii national guard youth and adult education programs.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 10. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The financial disclosure statements of the following persons shall be public records and available for inspection and duplication:

- (1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, ~~[the members of the board of education,]~~ the trustees of the office of Hawaiian affairs, and candidates for state elective offices;
- (2) The directors of the state departments and their deputies, regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general;
- (3) The administrative director of the State;
- (4) The president, the vice presidents, the assistant vice presidents, the chancellors, and the provosts of the University of Hawaii;
- (5) The members of the board of education and the superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education;
- (6) The administrative director and the deputy director of the courts; and
- (7) The administrator and the assistant administrator of the office of Hawaiian affairs."

SECTION 11. Section 84-41, Hawaii Revised Statutes, is amended to read as follows:

“[H§84-41H] Applicability of part. This part applies to legislators, ~~[elected]~~ members of the board of education, trustees of the office of Hawaiian affairs, the governor, the lieutenant governor, and executive department heads and deputies. This part does not apply to any other officer or employee of the State.”

SECTION 12. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of “elective officer” or “elective official” to read as follows:

““Elective officer” or “elective official”: any person elected to a public office or appointed to fill a vacancy of an elective office, except as a delegate to a constitutional convention ~~[or member of the board of education]~~, in accordance with an election duly held in the State or counties under chapter 11; provided that the person receives compensation, pay, or salary for such office.”

SECTION 13. Section 302A-447, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The council shall determine whether it shall directly select the student ~~[member of]~~ representative to the board or whether it shall run an election to select that individual.”

SECTION 14. Section 302A-1101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a principal executive department to be known as the department of education, which shall be headed by ~~[an elected]~~ a policy-making board to be known as the board of education. The board shall have power in accordance with law to formulate statewide educational policy, adopt student performance standards and assessment models, monitor school success, and ~~[to]~~ appoint the superintendent of education as the chief executive officer of the public school system.”

SECTION 15. Section 302A-1106.5, Hawaii Revised Statutes, is amended to read as follows:

“[H§302A-1106.5H] Board of education; community meetings. The board shall hold not less than ~~[two]~~ one community ~~[meetings]~~ meeting annually in each ~~[departmental school district]~~ county in addition to their regular meetings to discuss and receive input from the community on public education and public library issues. The board chairperson shall designate board members to attend the community meetings. These community meetings shall not be held for the purpose of formulating educational policy. The community meetings shall be exempt from sections 92-2.5, 92-7, 92-9, and 92-41~~[5]~~; provided that the board shall give written public notice of each community meeting. The meeting notice shall indicate the date, time, and place of the meeting, and shall be filed in the office of the lieutenant governor and in the board’s office for public inspection six calendar days before the meeting. The notice shall also be posted at the site of the meeting.”

SECTION 16. Section 302A-1110, Hawaii Revised Statutes, is amended to read as follows:

“[H§302A-1110H] Educational districts not applicable. The educational districts established by section 4-1 shall not be applicable to, nor alter, the ~~[school board or departmental school districts, established by section 13-1, or the]~~ school districts established for administrative purposes by the department.”

SECTION 17. Section 17-6, Hawaii Revised Statutes, is repealed.

SECTION 18. Section 302A-1105, Hawaii Revised Statutes, is repealed.

SECTION 19. Section 302A-1106, Hawaii Revised Statutes, is repealed.

SECTION 20. Chapter 13, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 21. Notwithstanding any law to the contrary, the elected members of the board of education serving on the day of the effective date of this Act shall continue to serve until the appointment of no fewer than five members of the board of education pursuant to this Act, at which time all elected members shall be discharged from office and the appointed board members shall begin their service; provided that any vacancy in an elected member's seat occurring between the effective date of this Act and the discharge from office of all the elected members of the board of education shall remain vacant until filled by appointment by the governor, with the advice and consent of the senate, pursuant to this Act; provided further that the governor shall nominate all members of the board of education no later than June 30, 2011.

PART V

SECTION 22. The revisor of statutes shall insert the number of this Act in the appropriate places in section 2 of this Act.

SECTION 23. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 24. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 25. This Act shall take effect upon its approval; provided that part III of this Act shall take effect when the elected members of the board of education are discharged from office pursuant to section 21 of this Act.

(Approved March 14, 2011.)

Notes

1. Semicolon should be struck through.
2. Edited pursuant to HRS §23G-16.5.

ACT 6

H.B. NO. 1034

A Bill for an Act Making Emergency Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. This Act is recommended for immediate passage in accordance with section 9 of Article VII of the Constitution of the State of Hawaii.

SECTION 2. There are appropriated or authorized from the sources of funding indicated below to make health care premium payments (BUF 761)

ACT 7

in the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2009-2011 the Hawaii employer-union health benefits trust fund costs contained in the agreement negotiated with the exclusive bargaining representative of collective bargaining units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 13:

General Funds FY 2010-2011
\$16,847,076

Of the above listed amounts, the following amounts are for the department of education, including the Hawaii state public library system:

General Funds FY 2010-2011
\$8,119,044

SECTION 3. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state agencies for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 4. There are appropriated or authorized from the sources of funding indicated below to make health care premium payments (BUF 761) in the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2009-2011, the Hawaii employer-union health benefits trust fund costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 13:

General Funds FY 2010-2011
\$1,248,090

Of the above listed amounts, the following amounts are for the department of education, including the Hawaii state public library system:

General Funds FY 2010-2011
\$257,402

SECTION 5. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state agencies for expenditure in the respective fiscal year for the purposes of this part.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2011, shall lapse as of that date.

SECTION 7. This Act shall take effect upon its approval.
(Approved March 17, 2011.)

ACT 7

S.B. NO. 123

A Bill for an Act Relating to Insurance Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:9A-123, Hawaii Revised Statutes, is amended to read as follows:

“§431:9A-123 Records of insurance producer. (a) Every insurance producer shall keep a record of all transactions consummated under the producer’s license. ~~[This]~~ The record required by this section shall be in a form organized according to class of insurance and shall include:

- (1) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance; and
- (2) Other and additional information as shall be customary, or as may reasonably be required by the commissioner.

(b) All the records as to any particular transaction shall be kept in the licensee’s office and shall be available and open to the inspection of the commissioner during business hours during the five years immediately after the date of the completion of the transaction.

(c) This section shall not apply to life or accident and health or sickness insurance if the records required of ~~[such]~~ the insurance are customarily maintained in the offices of the insurer.

(d) This section shall not apply to motor vehicle or homeowners insurance if the records required of the insurance are maintained electronically, accessible by the producer, and available within one business day.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 8, 2011.)

ACT 8

H.B. NO. 863

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 322H-2, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The authority shall submit a comprehensive health plan for all individuals in the State, including its findings and recommendations, to the legislature no later than twenty days prior to the convening of the regular session of ~~[2014-]~~ 2012.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 11, 2011.)

ACT 9

S.B. NO. 704

A Bill for an Act Relating to Renewable Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the development of renewable energy systems is critical to eliminating the State’s dependence on imported fossil

fuels and reducing carbon emissions. The legislature further finds that solar energy is among Hawaii's most important renewable energy options, representing an immediately available and substantial renewable energy opportunity. Since not all Hawaii residents are willing or able to purchase and operate individual renewable energy systems, third party on-site systems may increase access to renewable energy for more consumers.

The legislature also finds that exempting third party suppliers of renewable energy-generated electricity or heat by equipment located on a consumer's property from the definition of "public utility" will promote the use of renewable energy by more Hawaii residents. Third party renewable energy providers serve a different purpose than large public utilities do. Third party renewable energy systems provide a supplemental service to voluntary customers who are able to negotiate terms and price instead of supplying necessary services to captive consumers as public utilities currently do. Therefore, third party renewable energy systems should be exempt from regulation as public utilities.

The purpose of this Act is to exempt third party owners and operators of on-site renewable heat and energy generating equipment from regulation as public utilities by the public utilities commission.

SECTION 2. Section 269-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“Renewable energy system” means any identifiable facility, equipment, apparatus, or the like that converts renewable energy, as defined in section 269-91, to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent on fossil fuel for their generation.”

2. By amending the definition of “public utility” to read:

““Public utility”:

- (1) Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use~~;~~ for the transportation of passengers or freight~~;~~ ~~or~~ for the conveyance or transmission of telecommunications messages~~;~~ ~~or~~ for the furnishing of facilities for the transmission of intelligence by electricity ~~[by land or water or air]~~ within the State~~;~~ or between points within the State~~;~~ ~~by land, water, or air~~; for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil~~;~~; for the storage or warehousing of goods~~;~~; or for the disposal of sewage; provided that the term shall include:
 - (A) ~~[Any person insofar as that person owns or operates]~~ An owner or operator of a private sewer company or sewer facility; and
 - (B) ~~[Any]~~ A telecommunications carrier or telecommunications common carrier; and
- (2) Shall not include:
 - (A) ~~[Any person insofar as that person owns or operates]~~ An owner or operator of an aerial transportation enterprise;
 - (B) ~~[Persons owning or operating taxicabs,]~~ An owner or operator of a taxicab as defined in this section;
 - (C) Common carriers ~~[transporting]~~ that transport only freight on the public highways, unless operating within localities ~~[or], along routes, or between points that the public utilities com-~~

- mission finds to be inadequately serviced without regulation under this chapter;
- (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation [~~thereof~~] is necessary in the public interest;
- (E) [~~The business of any~~] A carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State [~~and~~]; provided that the towing, salvage, hauling, or carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally;
- (F) [~~The business of any~~] A carrier by water, substantially engaged in interstate or foreign commerce, [~~transporting~~] that transports passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
- (G) Any person who:
- (i) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and
 - (ii) Provides, sells, or transmits all of that power, except [~~such power~~] as is used in its own internal operations, directly to a public utility for transmission to the public;
- (H) A telecommunications provider only to the extent determined by the public utilities commission pursuant to section 269-16.9;
- (I) Any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and [~~such~~] other purposes [~~that shall be held~~] for public use and purpose;
- (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:
- (i) The services of the facility [~~shall be~~] are provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the [~~State~~] state or county [~~which has~~] agency that entered into the service contract;
 - (ii) The primary function of the facility [~~shall be~~] is the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility [~~that is~~] owned by a state or county agency;
 - (iii) The facility [~~shall~~] does not make sales of water to residential customers;
 - (iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose; and
 - (v) The facility [~~shall~~] is not [~~be~~] engaged, either directly or indirectly, in the processing of food wastes;

- (K) Any person who owns, controls, operates, or manages any seawater air conditioning district cooling project; provided that at least fifty per cent of the energy required for the seawater air conditioning district cooling system is provided by a renewable energy resource, such as cold, deep seawater; ~~and~~
- (L) Any person who owns, controls, operates, or manages plants or facilities primarily used to charge or discharge a vehicle battery that provides power for vehicle propulsion[-]; and
- (M) Any person who:
 - (i) Owens, controls, operates, or manages a renewable energy system that is located on a customer's property; and
 - (ii) Provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to the customer on whose property the renewable energy system is located; provided that, for purposes of this clause, a customer's property shall include all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, and utility rights-of-way.

If the application of this chapter is ordered by the commission in any case provided in paragraphs (2)(C), (2)(D), (2)(H), and (2)(I), the business of any public utility that presents evidence of bona fide operation on the date of the commencement of the proceedings resulting in the order shall be presumed to be necessary to the public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to ~~such~~ terms and conditions as the public utilities commission may prescribe, as provided in sections 269-16.9 and 269-20.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved April 25, 2011.)

Note

- 1. “The” should be underscored.

ACT 10

S.B. NO. 1346

A Bill for an Act Relating to Renewable Portfolio Standards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 269-91, Hawaii Revised Statutes, is amended by amending the definition of “renewable electrical energy” to read as follows:

““Renewable electrical energy” means:

- (1) Electrical energy generated using renewable energy as the source[-], and beginning January 1, 2015, includes customer-sited, grid-connected renewable energy generation; and
- (2) Electrical energy savings brought about by:

- (A) The use of renewable displacement or off-set technologies, including solar water heating, sea-water air-conditioning district cooling systems, solar air-conditioning, and customer-sited, grid-connected renewable energy systems; provided that, beginning January 1, 2015, electrical energy savings shall not include customer-sited, grid-connected renewable-energy systems; or
- (B) The use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer-funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2011.)

ACT 11

S.B. NO. 124

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10C to be appropriately designated and to read as follows:

“§431:10C- Replacing motor vehicle insurance policy through an insurer’s affiliate or subsidiary. An insurer shall be exempt from provisions governing policy cancellations or nonrenewals in sections 431:10C-111, 431:10C-111.5, and 431:10C-112 if:

- (1) The insurer offers to replace the insured’s policy through the insurer’s affiliate or subsidiary;
- (2) The replacement policy is effective upon the expiration of the existing policy;
- (3) The replacement policy provides the same or better coverage, terms, and conditions as the existing policy at a lower premium than the existing policy;
- (4) The insurer provides at least thirty days written notice of the prospective replacement to the insured; provided that the insured may waive notice pursuant to this paragraph; and
- (5) The insured accepts the replacement policy.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 12

S.B. NO. 27

A Bill for an Act Relating to Long-Term Care Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10A-102.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) When used in sections 431:10A-104, 431:10A-105, 431:10A-106, 431:10A-107, 431:10A-108, 431:10A-109, 431:10A-110, 431:10A-111, 431:10A-112, 431:10A-113, 431:10A-114, 431:10A-117, 431:10A-118, ~~431:10A-131,~~ 431:10A-601, 431:10A-602, 431:10A-603, and 431:10A-604, except as otherwise provided, the terms “accident insurance”, “accident and health or sickness insurance”, “health insurance”, or “sickness insurance” shall include an accident-only, specified disease, hospital indemnity, ~~[long term care,]~~ disability, dental, vision, medicare supplement, or other limited benefit health insurance contract regardless of the manner in which benefits are paid.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved April 25, 2011.)

ACT 13

S.B. NO. 35

A Bill for an Act Relating to the Motor Vehicle Industry Licensing Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 2010, the legislature passed Act 164, Session Laws of Hawaii (2010), to update protections for local auto dealers in their relations with manufacturers in response to the current difficult economic climate and major changes in the automotive industry, including the introduction of clean technology. The purpose of this Act is to update statutory cross references within the motor vehicle industry licensing act to reflect the statutory changes contained in Act 164.

SECTION 2. Section 437-28.5, Hawaii Revised Statutes, is amended to read as follows:

“**§437-28.5 Procedures, protections, rights, and remedies made available to licensees.** (a) The same procedures, protections, rights, and remedies provided to a dealer under ~~[section 437-28(a)(21) and]~~ section 437-3.6, section 437-28(a)(21), and part II shall apply to a distributor that is not a manufacturer.

(b) Notwithstanding the terms, provisions, or conditions of any dealer or distributor agreement ~~[or]~~ franchise, or ~~[the terms or provisions of any]~~ waiver and notwithstanding any other legal or administrative remedies available, any

person who is licensed under this chapter and whose business or property is injured by a violation of section 437-28(a)(21)~~];~~ or part II may bring a civil action in a court of competent jurisdiction in the State to enjoin further violations and to recover any damages together with the costs of the suit. Laws of the State of Hawaii shall apply to any action initiated under this ~~[section-]~~ subsection.

(c) Any person that brings or defends against a civil action under subsection (b) may be entitled to recover reasonable attorneys' fees as a part of any damages or injunction; provided that the person substantially prevails in establishing or defending against a violation of section 437-28(a)(21)~~];~~ or part II.

(d) Upon a cancellation or failure to renew a distributorship agreement, the party canceling or failing to renew the agreement, at the distributor's option, shall either:

- (1) Compensate the distributor at the fair market value ~~[for]~~ of the distributor's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the distributor for the purpose of the distributorship~~];~~ the distributor's inventory of parts, ~~including compensation related to;~~ the distributor's dealer operations and franchise agreements with other dealers; and motor vehicles possessed by the distributor in connection with the distributorship~~];~~ plus reasonable attorney's fees incurred in collecting compensation; provided that ~~[the]~~ to be eligible for compensation pursuant to this paragraph, an investment shall have been made with reasonable and prudent judgment for the purpose of the distributorship agreement;
or
- (2) Compensate the distributor for damages including reasonable attorney's fees ~~[as aforesaid;]~~ incurred in collecting compensation resulting from the cancellation or failure to renew the distributorship agreement.

~~[As used in this paragraph, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, or to act in a fair and equitable manner towards each other.]"~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved April 25, 2011.)

ACT 14

H.B. NO. 1622

A Bill for an Act Relating to Historic Preservation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. A state law enforcement memorial shall be constructed in the Capitol District, preferably on the Diamond Head side of the Kalanimoku building; provided that private funds shall be solicited and used for the construction of the memorial.

SECTION 2. This Act shall take effect on July 1, 2011.

(Approved April 25, 2011.)

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

“**§431:10A- Federal law compliance.** An accident and health or sickness insurer shall comply with applicable federal law. The commissioner shall enforce the consumer protections and market reforms relating to insurance as set forth in the federal Patient Protection and Affordable Care Act, Public Law 111-148.”

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

“**§432:1- Federal law compliance.** A mutual benefit society shall comply with applicable federal law. The commissioner shall enforce the consumer protections and market reforms relating to insurance as set forth in the federal Patient Protection and Affordable Care Act, Public Law 111-148.”

SECTION 3. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 2 to be appropriately designated and to read as follows:

“**§432:2- Federal law compliance.** A fraternal benefit society shall comply with applicable federal law. The commissioner shall enforce the consumer protections and market reforms relating to insurance as set forth in the federal Patient Protection and Affordable Care Act, Public Law 111-148.”

SECTION 4. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§432D- Federal law compliance.** A health maintenance organization shall comply with applicable federal law. The commissioner shall enforce the consumer protections and market reforms relating to insurance as set forth in the federal Patient Protection and Affordable Care Act, Public Law 111-148.”

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved April 25, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 16

H.B. NO. 1087

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the composition of a panel that nominates the members of the paroling authority should be updated. One of the panel delegates, Hawaii Criminal Justice Association, is no longer in existence.

The purpose of this Act is to update the composition of the panel that nominates the members of the paroling authority.

SECTION 2. Section 353-61, Hawaii Revised Statutes, is amended to read as follows:

“§353-61 Hawaii paroling authority; appointment; tenure; qualifications. Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, the director, [~~the president of the Hawaii Criminal Justice Association,~~] the president of the bar association of Hawaii, a representative designated by the head of the Interfaith Alliance Hawaii, a member from the general public to be appointed by the governor, and the president of the Hawaii chapter of the National Association of Social Workers. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairperson or as a member, for each vacancy. The requirement for nomination by the panel established under this section shall only apply to a nominee’s nomination by the governor to an initial term on the paroling authority and not to any subsequent consecutive term of a sitting paroling authority member or chairperson whose initial appointment to office was made pursuant to a nomination by the panel. The governor shall appoint, in¹ manner prescribed by section 26-34, a paroling authority to be known as the Hawaii paroling authority, to consist of three members one of whom shall be designated chairperson. Appointments shall be made for terms of four years, commencing from the date of expiration of the last preceding term. Any vacancy in an unexpired term shall be filled by appointment for the remainder² of the unexpired term. Nominees to the authority shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed.”

SECTION 3. The department of public safety shall not receive any additional funding in the department’s operating budget to carry out the purpose of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 25, 2011.)

Notes

1. Prior to amendment “the” appeared here.

2. Prior to amendment “remainder” appeared here.

A Bill for an Act Making an Emergency Appropriation to the Department of Human Services for Health Care Payments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Hawaii State Constitution.

SECTION 2. A critical fiscal emergency exists. The number of medical assistance recipients in Hawaii has increased by approximately ten to twelve per cent yearly for the current and previous two fiscal years.

The purpose of this Act is to appropriate \$57,500,000 in general funds and \$96,400,000 in federal funds for an emergency appropriation for fiscal year 2010-2011 for health care payments (HMS 401) to address a funding shortfall in the Medicaid program.

This funding will ensure continued timely payments to contracted health plans and will ensure that there will be no disruption in the provision of medically necessary services to program recipients.

In addition, the Hawaii federal medical assistance percentage which sets the federal match for Medicaid funds will decrease from 62.63 per cent on June 30, 2011, to 51.79 per cent on July 1, 2011. If \$57,500,000 is not appropriated for the current 2010-2011 fiscal year, payments to the health plans must be deferred to the next fiscal year. The State will also lose federal funding because of the reduction in the federal medical assistance percentage on July 1, 2011, and \$6,000,000 will need to be paid with State general funds.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$57,500,000 or so much thereof as may be necessary for fiscal year 2010-2011 to be used for the health care payments program (HMS 401).

SECTION 4. There is appropriated out of federal Medicaid funds the sum of \$96,400,000 or so much thereof as may be necessary for fiscal year 2010-2011 for health care payments (HMS 401) as a federal match.

SECTION 5. The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 26, 2011.)

A Bill for an Act Relating to the Transfer of Youth to an Adult Correctional Facility.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 352-28, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed and stricken.¹

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved April 26, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 19

H.B. NO. 112

A Bill for an Act Relating to Cable Television Systems.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 440G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§440G- Designation of access organizations for public, educational, or governmental access channels. (a) The director may designate an access organization to oversee the development, operation, supervision, management, production, and broadcasting of programs of public, educational, or governmental access facilities obtained under section 440G-8; provided that the designation shall be exempt from chapter 103D.

(b) No access organization shall be designated except upon written application or proposal to the director, and following a public hearing on each island within the local franchise area that provides opportunity for public input and allows interested parties to intervene.

(c) In determining whether to make a designation, the director shall consider:

- (1) The content of the application or proposal;
- (2) The public need for the proposed service;
- (3) The ability and experience of the applicant to offer public, educational, or government programming broadcast services;
- (4) The suitability of the applicant;
- (5) The financial responsibility of the applicant;
- (6) The technical and operational ability of the applicant to perform efficiently the services for which the designation is requested;
- (7) Any objections arising from the public hearing, the cable advisory committee, or elsewhere; and
- (8) Any other matters that the director deems appropriate under the circumstances.

(d) The director may require an applicant to provide information on its process for selecting members of its board of directors; provided that the director shall have no authority to require that an applicant amend its selection process as a condition of designation.

(e) An applicant shall provide information regarding its past performance and any proposed practices for ensuring that the public, educational, or governmental access facilities support the diversity of viewpoints and uphold the public's right of free speech.

(f) The director shall ensure that the terms and conditions required of the operation of an access organization designated under subsection (a) are fair

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to the public, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable access in the service area.

(g) Any decision designating, modifying, or rescinding a designation of an access organization or the requirements therefore shall first be submitted to the cable advisory committee for advice under section 440G-13.

(h) The department shall conduct an annual management and financial audit of the access organization designated under this section.”

SECTION 2. Section 440G-13, Hawaii Revised Statutes, is amended to read as follows:

“**§440G-13 Cable advisory committee.** (a) There is established the cable advisory committee. The committee shall consist of five members appointed by the governor as provided in section 26-34.

The committee shall advise ~~[the]~~:

(1) The director ~~[and]~~, cable operators, and access organizations on matters within the jurisdiction of this chapter at the request of the director ~~[or]~~, any cable operator~~[-]~~, or any access organization; and

(2) The director on any decision designating, modifying, or rescinding a designation of an access organization or the requirements therefor, as provided in section 440G-

(b) The members of the committee shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in discharge of their duties.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2011; provided that this Act shall be repealed on June 30, 2014, and section 440G-13, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved April 27, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 20

S.B. NO. 675

A Bill for an Act Relating to Student Loan Funds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Secondary Market Services Corp. — Hawaii was formed as a Hawaii not-for-profit corporation in 1992 pursuant to section 309-1.5, Hawaii Revised Statutes, to provide liquidity to banks participating in the Federal Family Education Loan Program as a secondary market student loan purchaser in Hawaii. As of June 30, 2010, the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) terminated new student loan originations by private entities under the Federal Family Education Loan Program. Instead, the federal government will originate all federally

guaranteed student loans under the Federal Direct Loan Program. Therefore, Secondary Market Services Corp. — Hawaii’s original purpose under section 309-1.5, Hawaii Revised Statutes, has expired, and the repeal of this section will permit Secondary Market Services Corp. — Hawaii to continue to serve the people of Hawaii in other educational and charitable activities authorized for tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code.

The purpose of this Act is to repeal section 309-1.5, Hawaii Revised Statutes, which establishes a not-for-profit corporation to acquire certain educational loan notes.

SECTION 2. Section 309-1.5, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed and stricken.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 27, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 21

S.B. NO. 1484

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 432:2-704, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Nothing contained in this article shall be so construed as to affect or apply to:

- (1) Grand or subordinate lodges of societies, orders, or associations now doing business in this State ~~[which]~~ that provide benefits exclusively through local or subordinate lodges;
- (2) Orders, societies, or associations ~~[which]~~ that admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies’ societies or ladies’ auxiliaries to such orders, societies, or associations;
- (3) Domestic societies ~~[which]~~ that limit their membership to employees of a particular city or town, designated firm, business house or corporation ~~[which]~~ that provide for a death benefit of not more than \$400 or disability benefits of not more than \$350 to any person in any one year, or both; ~~[or]~~
- (4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than \$400 or for disability benefits of not more than \$350 to any one person in any one year, or both~~[-];~~ or
- (5) Any association, whether a fraternal benefit society or not; provided that:
 - (A) The association was organized before 1880;

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- (B) The association's membership consists of active, retired, or honorably discharged members of the armed forces or sea services of the United States, including officers or enlisted members and regular or reserve members; and
- (C) A principal purpose of the association is to provide insurance and other benefits to its members and their dependents or beneficiaries."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 27, 2011.)

ACT 22

S.B. NO. 698

A Bill for an Act Relating to Roadway Materials.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103D-407, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) When purchasing roadway materials or other high-value, end-use applications for public projects, state and county agencies [~~shall, and county agencies~~] may⁷ purchase materials with minimum recycled glass content meeting specifications adopted by the policy board which, at a minimum, shall provide for:

- (1) A minimum recycled glass content of ten per cent crushed aggregate in treated or untreated basecourse in paving materials that shall not reduce the quality standards for highway and road construction; and
- (2) The use of one hundred per cent aggregate in nonstructural capital improvement applications.

(b) All highway and road construction and improvement projects funded by the State or a county or roadways that are to be accepted by the State or a county as public roads [~~shall utilize~~] may use a minimum of ten per cent crushed glass aggregate as specified by the department of transportation in all basecourse (treated or untreated) and subbase when the glass is available to the quarry or contractor at a price no greater than that of the equivalent aggregate."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 27, 2011.)

ACT 23

H.B. NO. 1540

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 125, Session Laws of Hawaii 2008, is amended by amending section 4 to read as follows:

~~“SECTION 4. This Act shall take effect upon its approval; provided that the amendments made to section 302A-804, Hawaii Revised Statutes, under section 2 of this Act shall be repealed on July 1, 2011, and section 302A-804, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect on June 30, 2011.

(Approved April 27, 2011.)

ACT 24

S.B. NO. 1171

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 51, Session Laws of Hawaii 2004, is amended by amending section 49 to read as follows:

~~“SECTION 49. No later than July 1, 2005, the board of education shall adopt a single school calendar for all public schools beginning with the 2006-2007 school year[;]; provided that this section shall not apply to multi-track schools, new century charter schools, [and] new century conversion charter schools[-], and other schools designated by the board of education in furtherance of a plan to improve educational outcome in students.”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 27, 2011.)

ACT 25

S.B. NO. 1288

A Bill for an Act Relating to the Emergency and Budget Reserve Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to amend Act 191, Session Laws of Hawaii 2010, which appropriated moneys from the emergency and budget reserve fund to maintain the levels of programs determined to be essential to education, public health, and public welfare for fiscal year 2010-2011.

The existing language of certain appropriations in Act 191 makes it difficult to carry out the legislature's intent to award moneys to specific organizations. This Act provides technical corrections to Act 191 to permit the awarding of moneys to specified organizations and extends the lapse date of Act 191's appropriations from June 30, 2011, to June 30, 2012.

SECTION 3. Act 191, Session Laws of Hawaii 2010, is amended as follows:

1. By adding a new section to read:

“SECTION 24A. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,900,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Primary Care Association for adult dental care provided at federally qualified health centers; provided that the funds shall not be used for any other purpose. The governor is authorized to use enhanced federal medical assistance percentages funds to offset the amount appropriated; provided that the total amount shall not exceed \$1,900,000. The department of human services shall prepare a report on:

- (1) The number of adults receiving these benefits;
- (2) The cost per person;
- (3) The total breakdown of administrative costs and other overhead costs; and
- (4) Statistics, if available, on how this dental program is reducing the number of emergency dental-related medical procedures;

provided that the department of human services shall submit its report to the legislature no later than twenty days prior to the convening of the regular session of 2012.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.”

2. By adding two new sections to read:

“SECTION 40A. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2010-2011 for Maui community college, University of Hawaii, for the adult dental care program.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 40B. Any unexpended or unencumbered balance of any appropriation made by this Act as of the close of business on June 30, 2011, shall not lapse; provided that all moneys from the appropriations that are unencumbered as of June 30, 2012, shall lapse to the emergency and budget reserve fund.”

SECTION 4. Act 191, Session Laws of Hawaii 2010, is amended as follows:

1. By amending section 12 to read:

“SECTION 12. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$332,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Waianae District Comprehensive Health and Hospital Board, Incorporated to support its emergency room services.

The sum appropriated shall be expended by the department of health for the purposes of this Act.”

2. By amending section 16 to read:

“SECTION 16. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Kokua Kalihi Valley Comprehensive Family Services.

The sum appropriated shall be expended by the department of health for the purposes of this Act.”

3. By amending sections 18 and 19 to read:

“SECTION 18. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Windward Oahu Spouse Abuse Shelter.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 19. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Blueprint for Change Program for Neighborhood Place Walk-in Centers.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.”

4. By amending sections 21 and 22 to read:

“SECTION 21. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$762,500 or so much thereof as may be necessary for fiscal year 2010-2011 to provide funding for grants pursuant to chapter 42F, Hawaii Revised Statutes, to support domestic violence shelters statewide[-] and to be distributed as follows:

- | | |
|----------------------------------------------------|-----------|
| (1) <u>Child and Family Service</u> | |
| (A) <u>Two shelters on Oahu</u> | \$206,429 |
| (B) <u>Two shelters on Hawaii Island</u> | \$206,429 |
| (2) <u>Parents and Children Together</u> | \$103,214 |
| (3) <u>Women Helping Women</u> | \$103,214 |
| (4) <u>Molokai Community Service Council, Inc.</u> | \$40,000 |
| (5) <u>Young Women’s Christian Association</u> | |
| <u>(YWCA) of Kauai</u> | \$103,214 |

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 22. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$210,000 for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Hale Mahaolu for personal care services.

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The sum appropriated shall be expended by the department of human services for the purposes of this Act.”

5. By amending section 30 to read:

“SECTION 30. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Adult Friends for Youth for youth gang prevention and intervention services.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.”

6. By amending sections 32, 33, 34, 35, and 36 to read:

“SECTION 32. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Volunteer Legal Services Hawaii to provide pro bono legal services for indigent persons.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 33. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$720,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Legal Aid Society of Hawaii to provide general civil legal services.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 34. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$282,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Hawaii Family Law Clinic to provide services to obtain temporary restraining orders.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 35. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Catholic Charities Hawaii to provide intra-familial sex assault treatment services.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 36. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Children’s Alliance of Hawaii, Inc., to provide child sex assault treatment services.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.”

7. By amending sections 38 and 39 to read:

“SECTION 38. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the ~~[YMCA]~~ Young Men’s Christian Association of Honolulu for the Weed and Seed Program.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 39. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$466,000 or so much thereof as may be necessary for fiscal year 2010-2011 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Kapiolani Medical Center for Women and Children for the sex abuse treatment center for statewide sex assault treatment services.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.”

SECTION 5. Act 191, Session Laws of Hawaii 2010 is amended by repealing section 24:

~~“SECTION 24. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii for QUEST health care payments, the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the restoration of adult dental care formerly granted under program ID HMS 245—QUEST health care payments; provided that the funds shall not be expended for any other purpose. The governor is authorized to utilize enhanced federal medical assistance percentages (FMAP) funds to offset the amount appropriated, provided that the total amount shall not exceed \$2,000,000. Any unexpended funds shall lapse to their respective funds.~~

~~The department of human services shall prepare a report on:~~

- ~~(1) The number of adults receiving these benefits;~~
- ~~(2) The cost per person;~~
- ~~(3) Total breakdown of administrative costs and other overhead costs; and~~
- ~~(4) Statistics, if available, of how this dental program is reducing the number of emergency dental-related medical procedures;~~

~~provided further that the department of human services shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.~~

~~The sum appropriated shall be expended by the department of human services for the purposes of this Act.”]~~

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 27, 2011.)

ACT 26

H.B. NO. 383

A Bill for an Act Relating to the Legislative Federal Economic Stimulus Program Oversight Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 150, Session Laws of Hawaii 2009, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on June 29, 2009, and shall be repealed on June 30, 2011[-]; provided that part II shall be repealed on December 31, 2011.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2011.

(Approved April 28, 2011.)

ACT 27

H.B. NO. 775

A Bill for an Act Relating to the Photo Enforcement Revolving Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 58, Session Laws of Hawaii 2002, repealed the law that established the photo enforcement revolving fund and transferred the moneys in that revolving fund to the general fund. Despite the clear legislative directive, records indicate that the photo enforcement revolving fund currently has a balance of \$3,480,000.

The purpose of this Act is to restate and reinforce the legislative directive to transfer all moneys in the photo enforcement revolving fund to the general fund of the State.

SECTION 2. All moneys in or credited to the photo enforcement revolving fund repealed by Act 58, Session Laws of Hawaii 2002, shall be transferred to the general fund of the State. The director of finance shall effectuate the transfer immediately.

SECTION 3. When the transfer of section 2 is effectuated, the photo enforcement revolving fund shall cease to exist.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved April 28, 2011.)

ACT 28

H.B. NO. 1015

A Bill for an Act Making an Emergency Appropriation Out of the Brownfields Cleanup Revolving Loan Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. A critical funding emergency exists. The department of business, economic development, and tourism received a grant of \$2,000,000 from the federal Environmental Protection Agency for a brownfields cleanup revolving loan program to clean up contaminated sites. Funds under this grant must be disbursed by the end of fiscal year 2010-2011. The department of business, economic development, and tourism executed a loan with the department of Hawaiian home lands to clean up a contaminated site in Kapolei. Funds must be disbursed to the department of Hawaiian home lands in fiscal year 2010-2011. The existing ceiling of the brownfields cleanup revolving loan fund is \$1,000,000. However, the funds that need to be disbursed exceed \$1,000,000. Therefore, an appropriation increase to \$2,000,000 out of the brownfields cleanup revolving loan fund is needed before the end of the fiscal year. This emergency appropriation is necessary in order for the State to address this shortfall.

The purpose of this Act is to appropriate additional moneys out of the brownfields cleanup revolving loan fund in order to complete the disbursement of funds to the department of Hawaiian home lands in fiscal year 2010-2011.

SECTION 3. Act 162, Session Laws of Hawaii 2009, as amended by Act 180, Session Laws of Hawaii 2010, is amended by amending item K-3 of section 3 to read as follows:

“3. BED144 – STATEWIDE PLANNING AND COORDINATION

		16.00 *	12.00 *
OPERATING	BED	1,557,671 A	1,060,383 A
		4.00 *	5.00 *
	BED	2,546,810 N	2,614,553 N
	BED	1,000,000 W	1,000,000 W <u>2,000,000 W</u> ”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 28, 2011.)

ACT 29

H.B. NO. 1035

A Bill for an Act Relating to Employees’ Retirement System Benefit Enhancement Moratorium.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to assist the employees’ retirement system in improving and protecting its funded status by placing a mora-

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torium on the enhancement of benefits until the system's funded ratio is one hundred per cent. If future legislatures grant additional benefits (which include earlier retirements), the time it will take the employees' retirement system to become fully funded will be lengthened, perhaps significantly, depending upon the level of enhancements granted.

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§88- **Moratorium on benefit enhancements.** There shall be no benefit enhancements under this chapter for any group of members, including any reduction of retirement age, until such time as the actuarial value of the system's assets is one hundred per cent of the system's actuarial accrued liability.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 28, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 30

S.B. NO. 1293

A Bill for an Act Making Emergency Appropriations for the Department of Human Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Hawaii State Constitution.

SECTION 2. A critical funding emergency exists for the fiscal period beginning July 1, 2010, and ending June 30, 2011, in HMS 211 for the cash assistance payments made to needy families, and in HMS 903 for the contracts the department of human services has with public and private agencies that provide the work and employment program services for financial assistance clients and for the purchase of service contracts to nonprofit organizations who are contributing to the department's third party excess temporary assistance for needy families maintenance of effort.

The programs that provide financial assistance for eligible adults with dependent children, the federally funded temporary assistance for needy families and the state-funded temporary assistance for other needy families programs, will expend all appropriated funds, federal and state, by the third quarter of the current fiscal year.

The department of human services will not be able to provide cash assistance to approximately 9,849 families with children without an emergency appropriation of \$11,523,511 in general funds in HMS 211 for fiscal year 2010-2011.

An emergency appropriation of \$45,184,770 in funds is also urgently needed in HMS 903 to maintain the contracts for work program services for

financial assistance clients who are required by federal law to participate in work activities to receive assistance and to maintain the purchase of service contracts that help the State meet the maintenance of efforts requirements. Funding of these contracts is necessary to prevent the loss of federal funding for the temporary assistance for needy families program.

Further, the general assistance program is also in need of an emergency appropriation of \$520,815 in general funds in HMS 204. The general assistance program, which provides cash assistance to individuals who are single, disabled, unemployed, and unable to qualify for federal assistance, will run out of money before the end of the current fiscal year, June 30, 2011, at the current financial assistance payment of \$353 per month.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$11,523,511 or so much thereof as may be necessary for fiscal year 2010-2011 for cash support for families pursuing self-sufficiency (HMS 211) to address the funding shortfall for cash support payments for families with dependent children.

SECTION 4. There is appropriated out of the emergency budget and reserve fund the sum of \$ 40,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 for general support for self sufficiency services (HMS 903) to address the funding shortfall for work program services and maintenance of effort contracts.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ 5,184,770 or so much thereof as may be necessary for fiscal year 2010-2011 for general support for self-sufficiency services (HMS 903) to address the funding shortfall for work program services and maintenance of effort contracts.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ 520,815 or so much thereof as may be necessary for fiscal year 2010-2011 for general assistance payments (HMS 204) to address the funding shortfall for general assistance.

SECTION 7. The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 28, 2011.)

ACT 31

S.B. NO. 1301

A Bill for an Act Relating to Fair Housing Exemptions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to make the exemptions from prohibited discriminatory practices in our state fair housing laws consistent with similar exemptions found in the federal Fair Housing Act by clarifying that the exemptions apply to lessors as well as owners, that the exemptions do not apply to advertising, publications, or statements, and by making the groups protected

in section 515-16, Hawaii Revised Statutes, consistent with the rest of chapter 515, Hawaii Revised Statutes.

SECTION 2. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

“§515-3 Discriminatory practices. It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection ~~[therewith;]~~ with a real estate transaction;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to fail to bring a property listing to the person’s attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- ~~[(6) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;~~
- ~~[(7) (6) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection [therewith;] with a real estate transaction;~~
- ~~[(8) (7) To refuse to engage in a real estate transaction with a person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog, or service animal; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:~~

“Blind” shall be as defined in section 235-1;

“Deaf” shall be as defined in section 235-1;

“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;

“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction; provided that as used in this paragraph, the “reasonableness” of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a “reasonable restriction” may require the owner of the service animal, guide dog, or signal dog to comply with one or more of the following:

- (A) Observe applicable laws including leash laws and pick-up laws;
- (B) Assume responsibility for damage caused by the dog; or
- (C) Have the housing unit cleaned upon vacating by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.

The foregoing list is illustrative only, and neither exhaustive nor mandatory;

“Service animal” means any animal that is trained to provide those life activities limited by the disability of the person;

“Signal dog” means any dog that is trained to alert a deaf person to intruders or sounds;

- ~~[(9)]~~ (8) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection, the causative agent of acquired immunodeficiency syndrome;
- ~~[(10)]~~ (9) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises~~[-A]~~; provided that a real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- ~~[(11)]~~ (10) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;
- ~~[(12)]~~ (11) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
 - (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
 - (B) With respect to housing accommodations with an accessible building entrance:
 - (i) The public use and common use portions of the housing accommodations are accessible to and usable by disabled persons;
 - (ii) Doors allow passage by persons in wheelchairs; and
 - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- ~~[(13)]~~ (12) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker’s organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of ~~such~~ access, membership, or participation.”

SECTION 3. Section 515-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Section 515-3 does not apply:

- (1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other if the owner or lessor resides in one of the housing accommodations; or
- (2) To the rental of a room or up to four rooms in a housing accommodation by an [individual] owner or lessor if the [individual] owner or lessor resides [therein.] in the housing accommodation.”

2. By amending subsection (c) to read:

“(c) Nothing in this chapter regarding familial status or age shall apply to housing for older persons as defined by Title 42 United States Code [section] Section 3607(b)(2).”

SECTION 4. Section 515-16, Hawaii Revised Statutes, is amended to read as follows:

“**§515-16 Other discriminatory practices.** It is a discriminatory practice for a person, or for two or more persons to conspire:

- (1) To retaliate, threaten, or discriminate against a person because of the exercise or enjoyment of any right granted or protected by this chapter, or because the person has opposed a discriminatory practice, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter;
- (2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice;
- (3) To interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or with the performance of a duty or the exercise of a power by the commission;
- (4) To obstruct or prevent a person from complying with this chapter or an order issued [thereunder;] pursuant to this chapter;
- (5) To intimidate or threaten any person engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise rights granted or protected by this chapter; ~~or~~
- (6) To threaten, intimidate or interfere with persons in their enjoyment of a housing accommodation because of the race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection of [such] the persons, or of visitors or associates of [such] the persons~~[-]; or~~
- (7) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or indirectly, an intent to make a limitation or specification, or to discriminate because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 29, 2011.)

ACT 32

S.B. NO. 1318

A Bill for an Act Relating to Use Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify the current application of the use tax by eliminating overbroad and redundant language in a provision relating to interstate commerce activities.

In Act 74, Session Laws of Hawaii 1979, the legislature amended the tax law to prevent the application of Hawaii general excise or use tax to certain interstate commerce activities of common carriers, which the legislative history identifies as primarily those involved in stevedoring and other similar activities. Act 74 was enacted in response to a United States Supreme Court opinion that expanded the State's ability to tax interstate commerce. In order to prevent the State from taxing stevedoring and other similar activities, Act 74 was the solution.

Since the enactment of Act 74, the tax laws have been amended to expressly exempt the particular stevedoring and other interstate commerce activities originally intended to be exempted by the legislature by Act 74. Because other provisions now expressly exempt these activities, language in the use tax law referencing Act 74 is redundant and unnecessary.

SECTION 2. Section 238-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The tax imposed by this chapter shall not apply to any property, services, or contracting or to any use of the property, services, or contracting that cannot legally be so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which the State is without power to impose the tax.

To the extent that any exemption, exclusion, or apportionment is necessary to comply with the preceding sentence, the director of taxation shall:

- (1) Exempt or exclude from the tax under this chapter, property, services, or contracting or the use of property, services, or contracting exempted under chapter 237; or
- (2) Apportion the gross value of services or contracting sold to customers within the State by persons engaged in business both within and without the State to determine the value of that portion of the services or contracting that is subject to taxation under chapter 237 for the purposes of section 237-21.

~~Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978, under the provisions of the Constitution of the United States or an act of the Congress of the United States to persons or common carriers engaged in interstate or foreign commerce, or both, whether ocean going or air, shall continue undiminished and be available thereafter.]”~~

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SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2011.)

ACT 33

S.B. NO. 1260

A Bill for an Act Relating to Public Finance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to set forth the State's allocation of any annual or other limit on the principal amount of bonds that may be issued by issuers within Hawaii, including tax exempt interest, tax credits, interest subsidies or other benefits under the Internal Revenue Code of 1986, as amended, which is limited by federal legislation.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER
ALLOCATION OF STATE BOND CEILING**

§ -1 **Definitions.** Whenever used in this chapter, unless a different meaning clearly appears from the context:

"Bond" means any bond, note, or other evidence of indebtedness or lease with separately stated principal and interest components or certificates of participation therein.

"Department" means the department of budget and finance.

"Issuer" means any state or county department, board, commission, authority or officer, or not-for-profit corporation authorized to issue bonds under the laws of the State.

"State ceiling" means any annual or other limit on the principal amount of bonds that may be issued by issuers, with tax exempt interest, tax credits, interest subsidies or other benefits under the Internal Revenue Code of 1986, as amended, which limit is imposed under or pursuant to the American Recovery and Reinvestment Act, Public Law 111-5, or any subsequent federal legislation.

§ -2 **Allocation of state bond ceiling.** (a) The department, with the approval of the governor, may allocate all or any part of the state ceiling to any issuer for a specific calendar year or shorter period. At the request of the department, any issuer to which any part of the state ceiling has been allocated, and with respect to which bonds have not yet been sold, shall return all or part of the allocation as the department has requested, in which case the department shall provide for its reallocation.

(b) In the event allocations of the state ceiling are made directly to issuers other than the State by federal statute or by the United States Department of the Treasury or other federal authority, including by requiring the State to make specified allocations, to the extent permitted by federal law or procedure, the department may require or request recipients of such allocations to report any plans the recipient may have to use the allocation in the form and by a date as the department may specify and to transfer to the State any allocation that

the recipients do not plan to use or which the department determines is not reasonably expected to be used, in which case the department may provide for its reallocation.

(c) Any issuer may request of the department an allocation or additional allocation of the state ceiling or transfer or return all or any portion of its allocation of the state ceiling to the State.

§ -3 Application of allocation. Any issuer that issues bonds to which an allocation of the state ceiling has been applied, shall evidence and report the application by a certificate, a copy of which shall be sent to the department. The department shall maintain a record of all allocations of the state ceiling made by the department and copies of certificates sent to or retained by the department.

§ -4 Carry forward. In the event that federal tax law permits all or any portion of the state ceiling or allocations thereof to be carried forward for future use, the director of finance of each county or any other issuer that has received state ceiling allocations that have not been applied as of December 15, or fifteen days prior to the end of the period during which the allocation must be used or carried forward under federal tax law, shall report to the department the amount of allocation that has not been applied and will not be applied by December 31 or such other deadline. Unless the director of finance of the county or other issuer, by written certificate, indicates to the department that it intends to carry forward all or any part of its unapplied allocation, the unapplied allocation shall revert to the State. The department, on behalf of the State, shall be entitled to carry forward the unapplied allocation together with any unapplied allocation of the State or state issuers for future allocation pursuant to section -2(a)."

SECTION 3. This Act shall take effect upon its approval.

(Approved April 29, 2011.)

ACT 34

H.B. NO. 546

A Bill for an Act Relating to Civil Rights.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify existing law with regard to sex discrimination and provide that discrimination based upon gender identity or expression constitutes a form of sex discrimination.

SECTION 2. Section 368-1, Hawaii Revised Statutes, is amended to read as follows:

“§368-1 Purpose and intent. The legislature finds and declares that the practice of discrimination because of race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability in employment, housing, public accommodations, or access to services receiving state financial assistance is against public policy. It is the purpose of this chapter to provide a mechanism [~~which~~] that provides for a uniform procedure for the enforcement of the State’s discrimination laws. It is the legislature’s intent to preserve all existing rights and remedies under such laws.”

SECTION 3. Section 378-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.”

SECTION 4. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

“§378-2 Discriminatory practices made unlawful; offenses defined. It shall be an unlawful discriminatory practice:

- (1) Because of race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:
 - (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
 - (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;
 - (C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, [~~which~~] that expresses, directly or indirectly, any limitation, specification, or discrimination;
 - (D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or
 - (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;
- (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
- (3) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
- (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;
- (5) For any employer to refuse to hire or employ or to bar or discharge from employment, any individual because of assignment of income for the purpose of satisfying the individual’s child support obligations as provided for under section 571-52;
- (6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individ-

- ual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
- (7) For any employer or labor organization to refuse to hire or employ ~~[or to]~~, bar or discharge from employment, ~~[or]~~ withhold pay~~[-]~~ from, demote, or penalize a lactating employee because an employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term “breastfeeds” means the feeding of a child directly from the breast; or
- (8) For any employer to refuse to hire or employ ~~[or to]~~, bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual’s credit history or credit report, unless the information in the individual’s credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2).”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved May 2, 2011.)

ACT 35

H.B. NO. 1640

A Bill for an Act Relating to Certificates of Identification.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that it is critical for all citizens in Hawaii to obtain state identification. The State authorizes the counties to issue state driver’s licenses in several convenient locations. However, those without state driver’s licenses must obtain certificates of identification, which may only be obtained from very few locations throughout the State.

The purpose of this Act is to mandate the attorney general to work with the counties to allow county employees to issue certificates of identification at the same locations where driver’s licenses are issued.

SECTION 2. Section 846-21, Hawaii Revised Statutes, is amended to read as follows:

“§846-21 Authority of attorney general. (a) The attorney general shall carry out this part. In conformity with chapter 76, the attorney general may appoint ~~[such]~~ subordinates, ~~[at such]~~ with compensation, within the limits of available appropriations therefor, or without compensation, as may be necessary or proper to carry out this part, and~~[-]~~ the attorney general may delegate to ~~[such]~~ the subordinates ~~[such of the attorney general’s]~~ those powers and duties ~~[as]~~ that may be necessary for the efficient administration of this part.

(b) The attorney general, in cooperation with the director of transportation and the appropriate county agencies, shall allow county employees to issue

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certificates of identification under this part at locations where driver's licenses are issued."

SECTION 3. The attorney general, in cooperation with the director of transportation and the counties, shall explore options and procedures to allow the counties to issue certificates of identification. The attorney general, in consultation with the director of transportation and the counties, shall submit a report to the legislature, including findings, recommendations, and any proposed legislation, no later than twenty days prior to the convening of the regular session of 2012.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that section 2 shall take effect on January 1, 2013.

(Approved May 2, 2011.)

ACT 36

H.B. NO. 865

A Bill for an Act Relating to Inspection Fees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 150A-5.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The fee shall be assessed and collected on the net weight of the imported freight computed on the basis of [50] 75 cents for every one thousand pounds of freight, or part thereof, brought into the State~~, or part thereof~~."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on approval.

(Approved May 4, 2011.)

ACT 37

S.B. NO. 1349

A Bill for an Act Relating to Nonprofit Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to implement certain portions of the Model Nonprofit Corporations Act, Third Edition. The legislature finds that voting by ballot and through electronic means is an efficient way to permit members of nonprofit corporations to vote or take other actions. This Act clarifies that members of Hawaii nonprofit corporations may take action by electronically-transmitted ballots.

The legislature also finds that allowing the conduct of membership meetings through electronic communications technology in appropriate circumstances allows for greater participation by members in nonprofit membership

corporations and reduces the costs associated with annual elections and matters involving membership voting. This Act also clarifies that membership meetings of Hawaii nonprofit corporations may utilize appropriate electronic communication methods.

Finally, this Act expressly permits nonprofit corporations to utilize electronic transmission to provide notice to directors in the manner currently permitted for notice to members; provided that the member or director has consented to receive notice by that method.

SECTION 2. Chapter 414D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§414D- Action by ballot. (a) Except as otherwise provided by the articles of incorporation or bylaws of a corporation, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a ballot to every member entitled to vote on the matter. The corporation may deliver ballots by electronic transmission.

(b) A ballot shall:

- (1) Be either in written form or in the form of an electronic transmission;
- (2) Set forth each proposed action;
- (3) Provide an opportunity to vote for or withhold a vote for each candidate for election as a director or officer; and
- (4) Provide an opportunity to vote for or against each proposed action.

(c) Approval by ballot pursuant to this section shall be valid only if:

- (1) The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting to authorize the action; and
- (2) The number of affirmative votes equals or exceeds the number of affirmative votes for approval that would be required to approve the action at a meeting.

(d) All solicitations for votes by ballot shall:

- (1) Indicate the number of responses needed to meet the quorum requirements;
- (2) State the percentage of approvals necessary to approve each action; and
- (3) Specify the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws of the corporation, a ballot shall not be revoked.”

SECTION 3. Section 414D-14, Hawaii Revised Statutes, is amended by amending the definitions of “approved by (or approval by) the members” and “vote” to read as follows:

““Approved by the members” [(or “approval by”) the members” means an act approved or ratified by [the]:

- (1) The affirmative vote of a majority of the votes represented and [vot- ing] cast at a duly held meeting at which a quorum is present [(which affirmative votes also constitute a majority of the required quorum) or by a written];
- (2) A ballot or written consent in conformity with this chapter; or [by the]
- (3) The affirmative vote, [written] ballot, or written consent of [such] the greater proportion, including the votes of all the members of

any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.

“Vote” includes authorization by ~~written~~ ballot and written consent.”

SECTION 4. Section 414D-15, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Notice may be oral, in the form of an electronic transmission as described in subsections (i) and (j), or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; ~~or~~ by mail or private carrier~~[-]~~; or by electronic transmission as described in subsections (i) and (j). If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published; or by radio, television, or other form of public broadcast communication.”

2. By amending subsections (i) and (j) to read:

“(i) Without limiting the manner by which notice otherwise may be given to members~~[-]~~ or directors, notice to members or directors given by the corporation under this chapter, the articles of incorporation, or the bylaws shall be effective if provided by electronic transmission consented to by the member or director to whom the notice is given. Any consent shall be revocable by the member or director by written notice or notice by electronic transmission to the corporation. ~~Any consent~~ Consent shall be deemed revoked if:

- (1) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with ~~such~~ the consent; and
- (2) The inability to deliver becomes known to the secretary or an assistant secretary of the corporation, to the transfer agent, or other person responsible for giving notice; provided that the inadvertent failure to treat ~~such~~ the inability to give electronic notice as a revocation shall not invalidate any meeting or other action.
- (j) Notice given pursuant to subsection (i) shall be deemed given:
 - (1) If by facsimile telecommunication, when directed to a number at which the member or director has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the member or director has consented to receive notice;
 - (3) If by posting on an electronic network together with separate notice to the member or director of ~~such~~ the specific posting, upon the later of the posting and the giving of ~~such~~ the separate notice; and
 - (4) If by any other form of electronic transmission, when directed to the member~~[-]~~ or director.

An affidavit of the secretary, assistant secretary, transfer agent, or other agent of the corporation that the notice has been given by a form of electronic transmission, in the absence of fraud, shall be prima facie evidence of the ~~facts stated therein~~ fact of notice.”

SECTION 5. Section 414D-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors~~[-]~~ or otherwise obtain their consent~~[-]~~ in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, or member, the court may order that ~~such a~~ the meeting be called or that a ~~written~~ ballot or

other form of obtaining the vote of members, delegates, or directors be authorized[-] in [such] a manner [as] that the court finds fair and equitable under the circumstances.”

SECTION 6. Section 414D-101, Hawaii Revised Statutes, is amended to read as follows:

~~“[§414D-101]~~ **Annual and regular meetings.** (a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation’s principal office.

(d) At the annual meeting:

(1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(2) The members shall consider and act upon [such] other matters as may be raised consistent with the notice requirements of sections 414D-105 and 414D-111.

(e) At regular meetings, the members shall consider and act upon [such] matters as may be raised consistent with the notice requirements of sections 414D-105 and 414D-111.

(f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation’s bylaws shall not affect the validity of any corporate action.

(g) If authorized by the board of directors in its sole discretion, members or proxies of members may participate at an annual or regular meeting of members by means of the Internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to:

(1) Read or hear the proceedings substantially concurrently with the occurrence of the proceedings;

(2) Vote on matters submitted to the members;

(3) Pose questions; and

(4) Make comments.

A member or proxy of a member participating in a meeting by means authorized by this subsection shall be deemed to be present in person at the meeting. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the Internet, teleconference, or other electronic transmission technology is a member or proxy of a member.”

SECTION 7. Section 414D-102, Hawaii Revised Statutes, is amended to read as follows:

§414D-102 Special meetings. (a) A corporation with members shall hold a special meeting of members:

(1) On call of its board, or the person or persons authorized to do so by the articles or bylaws; or

(2) Unless the articles or bylaws provide otherwise, if the holders of at least five per cent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands

for the meeting describing the purpose or purposes for which it is to be held.

(b) The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer shall be the record date for the purpose of determining whether the five per cent requirement of subsection (a) has been met.

(c) If a notice for a special meeting demanded under subsection (a)(2) is not given pursuant to section 414D-105 within thirty days after the date the written demand or demands are delivered to a corporate officer, ~~regardless of~~ notwithstanding the requirements of subsection (d), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 414D-105.

(d) Special meetings of members may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by section 414D-105 ~~may~~ shall be conducted at a special meeting of members.

(f) If authorized by the board of directors in its sole discretion, members or proxies of members may participate at a special meeting of members by means of the Internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to:

- (1) Read or hear the proceedings substantially concurrently with the occurrence of the proceedings;
- (2) Vote on matters submitted to the members;
- (3) Pose questions; and
- (4) Make comments.

A member or proxy of a member participating in a meeting by means authorized by this subsection shall be deemed to be present in person at the meeting. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the Internet, teleconference, or other electronic transmission technology is a member or proxy of a member."

SECTION 8. Section 414D-114, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of section 414D-138 are met unless the votes cast against removal[-] or not consenting in writing to the removal[-] would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast [~~or, if the action is taken by [written] ballot, all memberships entitled to vote were voted~~] and the entire number of directors authorized at the time of the director's most recent election were then being elected[-]; provided that if the action is taken by ballot, all members entitled to vote had voted."

SECTION 9. Section 414D-115, Hawaii Revised Statutes, is amended to read as follows:

"§414D-115 Other methods of electing directors. ~~[(a)]~~ A corporation may provide in its articles or bylaws for the election of directors by members or delegates:

- (1) On the basis of chapter or other organizational unit;

- (2) By region or other geographic unit;
- (3) By preferential voting; or
- (4) By any other reasonable method.

~~[(b) Where directors or officers are to be elected by members, the by-laws or board of directors may allow the election to be conducted by mail if no less than two thousand five hundred members are eligible to vote on the record date determined pursuant to section 414D-107, and the primary purpose of the corporation is the management of a planned community as defined in section 421J-2. Except for the corporations described in this subsection, the election of directors may be conducted by mail only if so provided in a corporation's bylaws or articles of incorporation.]~~

SECTION 10. Section 414D-116, Hawaii Revised Statutes, is amended to read as follows:

“[§414D-116] Corporation's acceptance of votes. (a) If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, acting in good faith, is entitled to accept the vote, ballot, consent, waiver, or proxy appointment and to give it effect as the act of the member.

(b) If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

- (1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
- (3) Two or more persons hold the membership as co-tenants or fiduciaries ~~[and]~~, the name signed purports to be the name of at least one of the co-holders, and the person signing appears to be acting on behalf of all the co-holders;
- (4) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; and
- (5) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment.

(c) The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to ~~[the]~~ a member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(f) A ballot may be signed by means of an electronic signature in accordance with chapter 489E.”

SECTION 11. Section 414D-145, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In corporations without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members, shall not be valid unless each director is given at least seven days’ ~~written~~ notice that the matter will be voted upon at a directors’ meeting or unless notice is waived pursuant to section 414D-146.”

SECTION 12. Section 414D-182, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Amendments to the articles of incorporation shall be made in the following manner:

- (1) If any members are entitled to vote on an amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual or special meeting of the members. ~~Written notice~~ Notice setting forth the proposed amendment or a summary of the changes to be effected ~~thereby~~ by the proposed amendments shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes ~~which~~ that members present at the meeting or represented by proxy are entitled to cast; and
- (2) If there are no members or no members entitled to vote ~~thereon,~~ on an amendment, an amendment shall be adopted at a meeting of the board of directors upon its receiving the vote of a majority of the directors in office.”

SECTION 13. Section 414D-184, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting ~~in writing~~ in accordance with section 414D-105. The notice ~~must~~ shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement.

(d) If the board seeks to have the restatement approved by the members by ~~written~~ ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement.”

SECTION 14. Section 414D-202, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If the board seeks to have the plan approved by the members by written consent or ~~written~~ ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary

of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.”

SECTION 15. Section 414D-222, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) If the board needs to have the transaction approved by the members by written consent or [~~written~~] ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.”

SECTION 16. Section 414D-242, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If the board seeks to have dissolution approved by the members by written consent or [~~written~~] ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.”

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 18. This Act shall take effect upon its approval.

(Approved May 4, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 38

S.B. NO. 923

A Bill for an Act Relating to the Commission on Fatherhood.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature established the state commission on fatherhood in 2003 in recognition of the important and unique role fathers play in the lives of their children, families, and communities. Chapter 577E, Hawaii Revised Statutes, directs the commission to serve in an advisory capacity to state agencies to promote healthy family relationships between parents and children. In recognition of the commission’s value and the need to continue to promote and support healthy families in Hawaii, the legislature established the commission as a permanent entity within the State in 2007.

The legislature finds that the term of office of the members of the commission on fatherhood should be extended from two years to four years to provide for institutional knowledge and continuity.

SECTION 2. Section 577E-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All members shall serve for a term of [~~two~~] four years. Any vacancies occurring in the membership of the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointments. No member shall serve on the commission for more than two terms; provided that if a member fills a vacancy and serves for the remainder of an unexpired term that member shall be considered to have served one term.”

ACT 39

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 4, 2011.)

ACT 39

S.B. NO. 81

A Bill for an Act Relating to Starlight Reserve.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 161, Session Laws of Hawaii 2009, is amended by amending section 6 to read as follows:

“SECTION 6. **Report; advisory committee terminated.** (a) The department of business, economic development, and tourism shall submit a final report to the legislature no later than twenty days prior to the convening of the regular session of 2010. The report shall include findings, recommendations, and necessary proposed legislation to implement this part.

(b) The advisory committee created in this part shall be terminated on June 30, ~~2011~~ 2013.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2011.

(Approved May 4, 2011.)

ACT 40

S.B. NO. 1233

A Bill for an Act Relating to the Solicitation of Funds from the Public.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 467B, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“~~§467B-~~ **Service of process; substituted service.** (a) A charitable organization, professional solicitor, or professional fundraising counsel that is required to be registered under this chapter and that either has its principal place of business outside of the State or is organized under the laws of another state, and who does not have a registered agent with the department of commerce and consumer affairs, is considered to have irrevocably appointed the department of the attorney general as its agent for the service of a summons, subpoena, or other process directed to the charitable organization, professional fundraising counsel, or professional solicitor, or to a director, officer, partner, or principal of the charitable organization, professional fundraising counsel, or professional solicitor in an investigation, action, or other proceeding brought under this chapter, or for purpose of service of a subpoena under section 467B-9.3.

(b) Service under subsection (a) is complete if the department immediately sends notice of the service and a copy of the process to the charitable organization, professional fundraising counsel, or professional solicitor, or to a director, officer, partner, or principal of the charitable organization, professional fundraising counsel, professional solicitor, or other person to whom it is directed, by registered mail, return receipt requested, to the last address known to the department of the charitable organization, professional fundraising counsel, professional solicitor, or other person to whom it is directed.

(c) A charitable organization, professional fundraising counsel, or professional solicitor that is required to be registered under this chapter and that has its principal place of business within this State, and does not have a registered agent with the department of commerce and consumer affairs, may be served with a subpoena, summons, or other court process by personal service within this State. If personal service within this State cannot be made, substituted service may be made by any of the following methods:

- (1) Mailing by registered or certified mail to the last-known place of business, residence, or abode within or without this State of the person for whom the subpoena is intended;
- (2) For any person other than a natural person, in the manner provided for service of summons in an action or suit; or
- (3) Service as directed by a court in lieu of personal service within this State.

§467B- Administrative enforcement; cease and desist orders. (a) Whenever the attorney general finds that a charitable organization has violated section 467B-2.1, the attorney general may issue, in addition to the remedies prescribed by section 467B-9.7(b), a cease and desist order to the charitable organization.

(b) Any person aggrieved by an action of the attorney general under this section may request an administrative hearing to review that action in accordance with chapter 91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action; provided that notice shall be deemed effective upon mailing.”

SECTION 2. Section 467B-6.5, Hawaii Revised Statutes, is amended to read as follows:

“[§467B-6.5] Annual financial reports; fiscal records and fees. (a) Every charitable organization required to register pursuant to section 467B-2.1 shall annually file with the department a report for its most recently completed fiscal year. ~~[The report shall include a financial statement and other information as the department may require.]~~ If the charitable organization files a Form 990 or 990-EZ with the Internal Revenue Service, the annual report shall be a copy of that Form 990 or 990-EZ. If the registered charitable organization is required to file a Form 990-T with the Internal Revenue Service, the annual report shall include a copy of that Form 990-T. If a charitable organization is not required to file a Form 990 or 990-EZ with the Internal Revenue Service, the annual report shall contain all information prescribed by the department. The charitable organization shall file ~~[the] its annual~~ report not ~~[more] later~~ than ~~[eight months] the fifteenth day of the fifth month~~ following the close of its fiscal year ~~[on or before the date the organization files a Form 990 or 990EZ with the Internal Revenue Service]~~. A charitable organization that has obtained an extension of time to file a Form 990 or 990-EZ from the Internal Revenue Service may obtain an extension of time to file the annual report with the department, by filing with the

department a copy of the Internal Revenue Service's approved extension of time to file. The report shall be accompanied by a filing fee as prescribed by subsection (d) ~~and shall be signed by two authorized officers of the organization, one of whom shall be the chief fiscal officer of the organization. These officers shall certify that the report is true and correct to the best of their knowledge. The department shall prescribe the form of the report and shall prescribe standards for its completion.~~ The department shall accept, under ~~such~~ conditions ~~as~~ prescribed by the attorney general ~~may prescribe~~, a copy or duplicate original of financial statements, reports, or returns filed by the charitable organization with the Internal Revenue Service or another state having requirements similar to the provisions of this section; provided that the attorney general may prescribe the form of the annual financial report for charitable organizations that file the Form ~~990N~~ 990-N with the Internal Revenue Service.

(b) A charitable organization with gross revenue in excess of \$500,000 in the year covered by the report shall include with its annual financial report, an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant; provided that any charitable organization shall include with its annual financial report an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant ~~as a result of a requirement imposed~~ if required to do so by a governmental authority or a third party. For the purpose of this subsection, "gross revenue" does not include grants or fees from government agencies or revenue derived from funds held in trust for the benefit of the organization.

(c) The department, upon written request and for good cause shown, may grant an extension of time, not to exceed three months, for the filing of the annual report ~~required by this section.~~

(d) Each charitable organization filing a report required by this section shall pay a filing fee to the department ~~based on the total amount of its~~ ~~income and receipts~~ gross revenues during the time covered by the report at the close of the calendar or fiscal year adopted by the charitable organization as follows:

- (1) \$10, if less than \$25,000;
- (2) \$25, if \$25,000 but less than \$50,000;
- (3) \$50, if \$50,000 but less than \$100,000;
- (4) \$100, if \$100,000 but less than \$250,000;
- (5) \$150, if \$250,000 but less than \$500,000;
- (6) \$200, if \$500,000 but less than \$1,000,000;
- (7) ~~\$300,~~ \$250, if \$1,000,000 but less than \$2,000,000;
- (8) ~~\$500,~~ \$350, if \$2,000,000 but less than \$5,000,000; or
- (9) ~~\$750,~~ \$600, if \$5,000,000 or more.

(e) If a return or report required under this section is not filed, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, a fine of \$20 shall be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000. ~~Returns and reports submitted without the proper filing fee shall not be accepted for filing.~~

(f) Every charitable organization subject to ~~section~~ 467B-2.1 and ~~this section~~ shall keep true fiscal records that shall be available to the department for inspection upon request. The organization shall retain the records for no less than three years after the end of the fiscal year to which they relate.

(g) The attorney general may require the annual financial report and audit report required by subsections (a) and (b) to be electronically submitted and to include electronic signatures.

SECTION 3. Section 467B-9.3, Hawaii Revised Statutes, is amended to read as follows:

“[H]§467B-9.3[H] Investigations; subpoenas; court orders. (a) The department, on its own motion or ~~[on]~~ upon complaint of any person, may conduct an investigation to determine whether any person has violated or is about to violate any provision of sections 467B-2.1, 467B-6.5, and 467B-9.

(b) The attorney general or the attorney general's authorized representative may subpoena documentary material relating to any matter under investigation, issue subpoenas to any person involved in or who may have knowledge of any matter under investigation, administer an oath or affirmation to any person, and conduct hearings on any matter under investigation.

(c) If any person fails to obey any subpoena issued by the department pursuant to this section, the department, after notice, may apply to the circuit court for the first circuit, State of Hawaii, for a hearing on the application, and after the hearing, the court may issue an order requiring the person to obey the subpoena or any part ~~[thereof,]~~ of the subpoena together with any other relief as may be appropriate. Any disobedience of any order entered under this section by any court shall be punished as ~~[a]~~ contempt ~~[thereof].~~

(d) In any case where the attorney general has authority to institute a civil action or proceeding in connection with the enforcement of this chapter, the attorney general may instead accept an assurance of discontinuance of any act or practice that violates the law from any person engaged in or who has engaged in the act or practice. Assurance accepted under this subsection may include a stipulation for the voluntary payment by the alleged violator of reasonable costs and disbursements incurred by the attorney general during the course of the attorney general's investigation. Evidence of a violation of an assurance shall constitute prima facie evidence of a violation of the applicable law in any civil action or proceeding later commenced by the attorney general.”

SECTION 4. Section 467B-9.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The attorney general may refuse to register ~~[or may]~~, revoke, or suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor, or issue a cease and desist order whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or ~~[an]~~ its agent, servant, or employee ~~[thereof]:~~

- (1) Has violated or is operating in violation of this chapter, the rules of the attorney general, or an order issued by the attorney general;
- (2) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this chapter or the rules of the attorney general;
- (3) Has made a material false statement in an application, statement, or report required to be filed under this chapter; or
- (4) Has failed to file the financial report required by section 467B-2.5, or filed an incomplete financial report.”

SECTION 5. Section 467B-11.5, Hawaii Revised Statutes, is amended to read as follows:

“[H]§467B-11.5[H] Charitable organizations exempted from registration and financial disclosure requirements. The following charitable organizations shall not be subject to sections 467B-2.1 and 467B-6.5, if ~~[each]~~ the organization sub-

mits information as the department may require to substantiate an exemption under this section:

- (1) Any duly organized religious corporation, institution, or society~~;~~ that is exempt from filing Form 990 with the Internal Revenue Service pursuant to sections 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i) of the Internal Revenue Code, as amended;
- (2) Parent-teacher associations;
- ~~(2)~~ (3) Any ~~[parent-teacher association or]~~ educational institution~~;~~ the curricula of which in whole or in part are registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body~~;~~ that is licensed or accredited by any of the following licensing or accrediting organizations:
 - (A) Hawaii Association of Independent Schools;
 - (B) Hawaii Council of Private Schools;
 - (C) Western Association of Schools and Colleges;
 - (D) Middle States Association of Colleges and Schools;
 - (E) New England Association of Schools and Colleges;
 - (F) North Central Association of Colleges and Schools;
 - (G) Northwest Association of Schools and Colleges;
 - (H) Southern Association of Colleges and Schools; or
 - (I) The National Association for the Education of Young Children;
 and any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code expressly authorized by, and having an established identity with, such an educational institution; provided that the organization's solicitation of contributions is primarily directed to the students, alumni, faculty, and trustees of the institutions and their respective families;
- ~~(3)~~ (4) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- ~~(4)~~ (5) Any ~~[governmental unit or instrumentality of any state or the United States;]~~ corporation established by an act of the United States Congress that is required by federal law to submit to Congress annual reports, fully audited by the United States Department of Defense, of its activities including itemized accounts of all receipts and expenditures;
- ~~(5)~~ (6) Any ~~[person who solicits solely for the benefit of organizations described in paragraphs (1) to (4);]~~ agency of this State, another state, or the federal government; and
- ~~(6)~~ (7) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not ~~[compensate any person primarily to conduct solicitations.]~~ employ or compensate a professional solicitor or professional fundraising counsel.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved May 4, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 41

S.B. NO. 1327

A Bill for an Act Relating to Passenger Facility Charges.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 261-5.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The passenger facility charge shall be a charge for the use and services of an undertaking for the purposes and within the meaning of section 39-61(a)(1) and (3). Notwithstanding any laws to the contrary and without regard to chapter 91, the department may assess a passenger facility charge as authorized under Title 49 United States Code Section 40117 and as provided under Title 14 Code of Federal Regulations Part 158 for each overseas or international passenger who uses a state airport. The department shall establish the passenger facility charge in accordance with applicable federal laws and regulations. No passenger facility charge shall be assessed on flight segments between two or more airports within the State.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved May 4, 2011.)

ACT 42

H.B. NO. 298

A Bill for an Act Relating to Court Interpreters.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 621-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All witnesses summoned or subpoenaed to appear in any circuit court, family court, or district court case, as well as all court interpreters who appear at the request of the circuit court, family court, or district court, shall be exempt from any prosecution, penalty, or fine ~~[as a result of]~~ resulting from a parking violation for an expired meter committed in connection with the witness or court interpreter appearing in court; provided that the witness or court interpreter shall present any parking citation received during this time to the clerk of the court and the clerk shall verify that the witness or court interpreter was present at the time the citation was received. The supreme court shall adopt rules necessary to effect this section.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 2011.)

A Bill for an Act Relating to Statutory Revision: Amending Various Provisions of the Hawaii Revised Statutes for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Unnecessary Provisions.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 89-2, Hawaii Revised Statutes, is amended by amending the definitions of “collective bargaining” and “employee organization” to read as follows:

““Collective bargaining” means the performance of the mutual obligations of the public employer and an exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, amounts of contributions by the State and counties to the [~~Hawaii public employees health fund,~~] Hawaii employer-union health benefits trust fund, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal[~~5~~] or be required to make a concession. For the purposes of this definition, “wages” includes the number of incremental and longevity steps, the number of pay ranges, and the movement between steps within the pay range and between the pay ranges on a pay schedule under a collective bargaining agreement.

“Employee organization” means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the [~~Hawaii public employees health fund,~~] Hawaii employer-union health benefits trust fund, and other terms and conditions of employment of public employees.”

SECTION 2. Chapter 89A, Hawaii Revised Statutes, is amended by amending its title to read as follows:

~~CHAPTER 89A~~ **OFFICE OF COLLECTIVE BARGAINING AND MANAGED COMPETITION**

SECTION 3. Section 231-40, Hawaii Revised Statutes, is amended to read as follows:

“**§231-40 Interpretation.** Sections 231-34, 231-35, 231-36, and [~~231-7.5~~] 231-36.4 shall be construed in accordance with judicial interpretations given to similar provisions of Title 26 of the United States Code; consistent therewith, the term “wilfully” shall mean a voluntary, intentional violation of a known legal duty.”

SECTION 4. Section 231-41, Hawaii Revised Statutes, is amended to read as follows:

“**§231-41 Statute of limitation for criminal penalties.** Notwithstanding any laws to the contrary, prosecutions under sections 231-34, 231-35, 231-36, and [~~231-7.5~~] 231-36.4 shall be commenced within seven years after the commission of the offense.”

SECTION 5. Section 235-2.35, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§235-2.35]]~~ **Operation of certain Internal Revenue Code provisions not operative under section 235-2.3.** Notwithstanding the meaning of “Internal Revenue Code” as that term is used in section ~~[[235-2.3]]~~, beginning April 1, 2010, the following sections of the federal Internal Revenue Code of 1986, as amended as of April 1, 2010, shall be operative for purposes of this chapter:

- (1) Section 6041 as applicable to persons under section 6041(h) (with respect to information returns at the source for certain corporations);
- (2) Section 6038D (with respect to information with respect to foreign financial assets). With respect to persons required to report information under this section, section 6662(j) (with respect to imposition of accuracy-related penalties on underpayments) and section 6501(e)(1)(A)(ii) (with respect to limitations on assessment and collection) shall also be operative for purposes of this chapter and shall be applied consistently with the correlating provisions of ~~[[~~ sections~~]]~~ 231-36.6 and 235-111;
- (3) Section 6045B (with respect to returns relating to actions affecting basis in securities); and
- (4) Section 6050W (with respect to returns relating to payments made in settlement of payment card and third party network transactions).”

SECTION 6. Section 237-24.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) As used in this section:

“Activities relating to the general servicing of fiduciary or custodial accounts” means those activities performed by trust companies ~~[which]~~ that are directly or indirectly performed within the fiduciary or custodial relationship between the trust company or trust department of a financial institution and its client and ~~[which]~~ that are not offered to any person outside of the fiduciary or custodial relationship.

“Annual percentage rate” and “finance charge” have the same ~~[meaning]~~ meanings as defined in the federal Truth in Lending Act (15 United States Code ~~[sections]~~ Sections 1605(a) to (c) and 1606).

“Deposit” means:

- (1) Money or its equivalent received or held by a financial institution in the usual course of business and for which it has given or is obligated to give credit to:
 - (A) A commercial (including public deposits), checking, savings, time, or thrift account;
 - (B) A check or draft drawn against a deposit account and certified by the financial institution;
 - (C) A letter of credit; or
 - (D) A traveler’s check, on which the financial institution is primarily liable;
- (2) Trust funds received or held by a financial institution, whether held in the trust department or held or deposited in any other department of the financial institution;
- (3) Money received or held by a financial institution, or the credit given for money or its equivalent received or held by a financial institution in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including~~;~~

without being limited to, escrow funds, funds held as security for an obligation due the financial institution or others (including funds held as dealers' reserves) or for securities loaned by the financial institution, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet the financial institution's acceptances or letters of credit, and withheld taxes;

- (4) Outstanding drafts, cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose; or
- (5) Money or its equivalent held as a credit balance by a financial institution on behalf of its customer if the financial institution is engaged in soliciting and holding the balances in the regular course of its business.

"Financial institution" means banks, building and loan associations, development companies, financial corporations, financial services loan companies, small business investment companies, financial holding companies, ~~mortgage loan originator companies as defined in chapter 454F,~~ and trust companies all as defined in chapter 241[-], and mortgage loan originator companies as defined in chapter 454F.

"Leasing of personal property" occurs if:

- (1) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;
- (2) The property to be leased is acquired specifically for the leasing transaction under consideration, or was acquired specifically for an earlier leasing transaction;
- (3) The lease is on a nonoperating basis where the financial institution may not, directly or indirectly:
 - (A) Provide for the maintenance, repair, replacement, or servicing of the leased property during the lease term;
 - (B) Purchase parts and accessories in bulk or for an individual property after the lessee has taken delivery of the property; or
 - (C) Purchase insurance for the lessee;
- (4) At the inception of the lease, the effect of the transaction will yield a return that will compensate the lessor financial institution for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease, from:
 - (A) Rentals;
 - (B) Estimated tax benefits, including capital goods excise tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect; and
 - (C) The estimated residual value of the property at the expiration of the initial term of the lease;
- (5) The maximum lease term during which the lessor financial institution shall recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be forty years; and
- (6) At the expiration of the lease, including any renewals or extensions with the same lessee, all interest in the property shall be either liquidated or leased again on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease; provided that in no case shall the lessor retain any interest in

the property beyond fifty years after the lessor's acquisition of the property.”

SECTION 7. Section 291-11.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Violation of this section shall be considered an offense as defined under section 701-107(5) and shall subject the violator to the following penalties:

- (1) For a first conviction, the person shall:
 - (A) Be fined not more than \$100;
 - (B) Be required by the court to attend a child passenger restraint system safety class conducted by the division of driver education; provided that:
 - (i) The class may include video conferences as determined by the administrator of the division of driver education as an alternative method of education; and
 - (ii) The class shall not exceed four hours;
 - (C) Pay a \$50 driver education assessment as provided in section 286G-3;
 - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; [and]
 - (E) Pay up to a \$10 surcharge to be deposited into the trauma system [special] fund if the court so orders; and¹
- (2) For a conviction of a second offense committed within three years of any other conviction under this section, the person shall:
 - (A) Be fined not less than \$100 but not more than \$200;
 - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class;
 - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education;
 - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; [and]
 - (E) Pay up to a \$10 surcharge to be deposited into the trauma system [special] fund if the court so orders;²
- (3) For a conviction of a third or subsequent offense committed within three years of any other conviction under this section, the person shall:
 - (A) Be fined not less than \$200 but not more than \$500;
 - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class;
 - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education;
 - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; [and]
 - (E) Pay up to a \$10 surcharge to be deposited into the trauma system [special] fund if the court so orders.”

SECTION 8. Section 339D-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding subsection (a), the department shall not have the authority to assess any fees, including an advanced recycling fee, registration fee, or other fee, on consumers, television manufacturers, or retailers for recovery of covered televisions except those noted in sections ~~[§]339D-4[§]~~ and 339D-22.”

PART II

SECTION 9. Section 346-1, Hawaii Revised Statutes, is amended by amending the definition of “critical access hospital” to read as follows:

““Critical access hospital” means a hospital located in the State that is included in Hawaii’s rural health plan approved by the federal ~~[Health Care Financing Administration]~~ Centers for Medicare and Medicaid Services and approved as a critical access hospital by the department of health as provided in Hawaii’s rural health plan and as defined in Title 42 [U.S.C. section] United States Code Section 1395i-4.”

SECTION 10. Section 346D-1, Hawaii Revised Statutes, is amended by amending the definition of “critical access hospital” to read as follows:

““Critical access hospital” means a hospital located in the State that is included in Hawaii’s rural health plan approved by the federal ~~[Health Care Financing Administration]~~ Centers for Medicare and Medicaid Services and approved as a critical access hospital by the department of health as provided in Hawaii’s rural health plan and as defined in Title 42 [U.S.C. section] United States Code Section 1395i-4.”

SECTION 11. Section 346D-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Medicaid home and community-based waiver program expenditures shall not exceed the amount authorized by the federal ~~[Health Care Financing Administration.]~~ Centers for Medicare and Medicaid Services.”

SECTION 12. Section 353G-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of public safety, with the assistance of the department of health, may pursue all available funding through federal programs and private sources. Contingent upon the receipt of sufficient funds, the department of public safety may implement the assessment and treatment services mandated pursuant to this chapter. If at any time funds are not available, the department may not be required to provide these services. In addition, the department of public safety, in conjunction with the department of health, may pursue all available federal matching funds through medicaid for nonhospital residential alcohol and other drug treatment services from the United States ~~[Health Care Financing Administration.]~~ Centers for Medicare and Medicaid Services.”

SECTION 13. Section 431:3-304.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Documents, materials, or other information related to or provided in connection with an actuarial report, working papers, or actuarial opinion summary that are in possession or control of the commissioner shall be confidential by law and privileged, shall not be made public, shall not be subject to subpoena or discovery, and shall not be admissible as evidence in any private civil action; provided that:

- (1) The commissioner may release the documents to the Actuarial Board for Counseling and Discipline or its successor to the extent that the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline or its successor establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents;
- (2) This section shall not be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties; and
- (3) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection."

SECTION 14. Section 431:9-203, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A licensee shall:

- (1) Inform the commissioner by any means acceptable to the commissioner of any change of status within thirty days of the change; and
- (2) Report any change of status to the business registration division if the licensee is a business entity registered with the department of commerce and consumer affairs pursuant to title 23 or title 23A, or if the licensee has registered a trade name pursuant to [part II] of chapter 482.

Failure to timely inform the commissioner or business registration division of a change of status shall result in a penalty pursuant to section 431:2-203."

SECTION 15. Section 431:10A-105, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-105 Required provisions. Except as provided in section 431:10A-107, each policy of accident and health or sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below. These provisions shall be in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording certified by an officer of the insurer to be in substantial conformance with the wording below that are in each instance not less favorable in any respect to the insured or the beneficiary. The provisions shall be preceded individually by the specified caption[;] or by appropriate individual or group captions or sub-captions that are substantially similar to the specified captions. The provisions required by this section are as follows:

- (1) "Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions";
- (2) (A) "Time Limit on Certain Defenses:
 - (i) After three years from the date of issue of this policy, no misstatements, except fraudulent misstatements, made by the applicant in the application for this policy shall

- be used to void this policy or to deny a claim for loss incurred or disability as defined in the policy commencing after the expiration of the three-year period; and
- (ii) No claim for loss incurred or disability as defined in the policy commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded on the date of loss from coverage by name or specific description [effective] had existed prior to the effective date of coverage of this policy”;
- (B) The policy provision set forth in subparagraph (A)(i) shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of section 431:10A-106(1) through (4) in the event of misstatement with respect to age, occupation, or other insurance; and
 - (C) A policy that the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of subparagraph (A)(i) the following provision from which the clause in parentheses may be omitted at the insurer’s option: “Incontestable: After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application”;
- (3) (A) “Grace period: A grace period of (insert a number not less than seven for weekly premium policies, ten for monthly premium policies, and thirty-one for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force”;
 - (B) A policy that contains a cancellation provision may add at the end of the provision required by subparagraph (A): “subject to the right of the insurer to cancel in accordance with the cancellation provision”;
 - (C) A policy in which the insurer reserves the right to refuse any renewal shall have at the beginning of the provision required by subparagraph (A): “Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured’s last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted”;
- (4) (A) “Reinstatement: If any renewal premium is not paid within the time granted to the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided that if the insurer or agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of the application by the insurer or, lacking approval, upon the forty-fifth day following the date

- of conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from accidental injury as may be sustained after the date of reinstatement and loss due to sickness as may begin more than ten days after that date. In all other respects, the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with the reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement"; and
- (B) The last sentence in subparagraph (A) may be omitted from any policy that the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue;
- (5) (A) "Notice of Claim: Written notice of claim shall be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of the office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer"; and
- (B) In a policy providing a loss of time benefit that may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences in subparagraph (A): "Subject to the qualification set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of the claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in giving notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which notice is actually given";
- (6) "Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant any forms that are usually furnished by it for filing proofs of loss. If the forms are not furnished within fifteen days after the giving of notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made";
- (7) "Proofs of Loss: In case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, written proof of loss must be furnished to the insurer at its office within

ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of loss. Failure to furnish proof of loss within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within the time required, provided proof is furnished as soon as reasonably possible and in no event, except the absence of legal capacity, later than fifteen months from the time proof is otherwise required”;

- (8) “Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment shall be paid immediately upon receipt of due written proof of loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment shall be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability shall be paid immediately upon receipt of due written proof”;
- (9) (A) “Payment of Claims: Indemnity for loss of life shall be payable in accordance with the beneficiary designation and the provisions respecting payment which may be prescribed herein and effective at the time of payment. If no designation or provision is then effective, the indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured’s death may, at the option of the insurer, be paid either to the designated beneficiary or to the estate of the insured. All other indemnities shall be payable to the insured”; and
- (B) Either or both of the following provisions may be included with the provision set forth in subparagraph (A) at the option of the insurer:
- (i) “If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay the indemnity, up to an amount not exceeding \$2,000 to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of the payment”; and
- (ii) “Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer’s option and unless the insured requests otherwise in writing not later than the time of filing proofs of loss, be paid directly to the hospital or person rendering the services; but it is not required that the service be rendered by a particular hospital or person”;
- (10) “Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law”;

- (11) “Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No action at law or in equity shall be brought after the expiration of three years after the time written proof of loss is required to be furnished”; and
- (12) (A) “Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change the beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy”; and
- (B) The first clause of subparagraph (A), relating to the irrevocable designation of beneficiary, may be omitted at the insurer’s option.”

SECTION 16. Section 431:10A-119, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any other law to the contrary notwithstanding, commencing on January 1, 2000, all authorized insurers that provide for payment of or reimbursement for hospice care[.] shall reimburse hospice care services for each insured policyholder covered for hospice care according to the following:

- (1) A minimum daily rate as set by the [~~Health Care Financing Administration~~] Centers for Medicare and Medicaid Services for hospice care;
- (2) Reimbursement for residential hospice room and board expenses directly related to the hospice care being provided; and
- (3) Reimbursement for each hospice referral visit during which a patient is advised of hospice care options, regardless of whether the referred patient is eventually admitted to hospice care.”

SECTION 17. Section 432:1-608, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any other law to the contrary notwithstanding, commencing on January 1, 2000, all mutual benefit societies issuing or renewing an individual and group hospital or medical service plan, policy, contract, or agreement in this State that provides for payment of or reimbursement for hospice care[.] shall reimburse hospice care services for each insured member covered for hospice care according to the following:

- (1) A minimum daily rate as set by the [~~Health Care Financing Administration~~] Centers for Medicare and Medicaid Services for hospice care;
- (2) Reimbursement for residential hospice room and board expenses directly related to the hospice care being provided; and
- (3) Reimbursement for each hospice referral visit during which a patient is advised of hospice care options, regardless of whether the referred patient is eventually admitted to hospice care.”

SECTION 18. Section 432E-1.4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For the purposes of this section:

“Cost-effective” means a health intervention where the benefits and harms relative to the costs represent an economically efficient use of resources for patients with the medical condition being treated through the health intervention;

provided that the characteristics of the individual patient shall be determinative when applying this criterion to an individual case.

“Effective” means a health intervention that may reasonably be expected to produce the intended results and to have expected benefits that outweigh potential harmful effects.

“Health intervention” means an item or service delivered or undertaken primarily to treat a medical condition or to maintain or restore functional ability. A health intervention is defined not only by the intervention itself, but also by the medical condition and patient indications for which it is being applied. New interventions for which clinical trials have not been conducted and effectiveness has not been scientifically established shall be evaluated on the basis of professional standards of care or expert opinion. For existing interventions, scientific evidence shall be considered first and, to the greatest extent possible, shall be the basis for determinations of medical necessity. If no scientific evidence is available, professional standards of care shall be considered. If professional standards of care do not exist or are outdated or contradictory, decisions about existing interventions shall be based on expert opinion. Giving priority to scientific evidence shall not mean that coverage of existing interventions shall be denied in the absence of conclusive scientific evidence. Existing interventions may meet the definition of medical necessity in the absence of scientific evidence if there is a strong conviction of effectiveness and benefit expressed through up-to-date and consistent professional standards of care, or in the absence of such standards, convincing expert opinion.

“Health outcomes” mean outcomes that affect health status as measured by the length or quality of a patient’s life, primarily as perceived by the patient.

“Medical condition” means a disease, illness, injury, genetic or congenital defect, pregnancy, or a biological or psychological condition that lies outside the range of normal, age-appropriate human variation.

“Physician designee” means a physician or other health care practitioner designated to assist in the decisionmaking process who has training and credentials at least equal to the treating licensed health care provider.

“Scientific evidence” means controlled clinical trials that either directly or indirectly demonstrate the effect of the intervention on health outcomes. If controlled clinical trials are not available, observational studies that demonstrate a causal relationship between the intervention and the health outcomes may be used. Partially controlled observational studies and uncontrolled clinical series may be suggestive, but do not by themselves demonstrate a causal relationship unless the magnitude of the effect observed exceeds anything that could be explained either by the natural history of the medical condition or potential experimental biases. Scientific evidence may be found in the following and similar sources:

- (1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;
- (2) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National []Institutes[] of Health’s National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR);
- (3) Medical journals recognized by the Secretary of Health and Human Services under [section] Section 1861(t)(2) of the Social Security Act, as amended;

- (4) Standard reference compendia including the American Hospital Formulary Service-Drug Information, American Medical Association Drug Evaluation, American Dental Association Accepted Dental Therapeutics, and United States Pharmacopoeia-Drug Information;
- (5) Findings, studies, or research conducted by or under the auspices of federal agencies and nationally recognized federal research institutes including but not limited to the Federal Agency for Health Care Policy and Research, National Institutes ~~[of]~~ Health, National Cancer Institute, National Academy of Sciences, ~~[Health Care Financing Administration,]~~ Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services; and
- (6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

“Treat” means to prevent, diagnose, detect, provide medical care, or palliate.

“Treating licensed health care provider” means a licensed health care provider who has personally evaluated the patient.”

SECTION 19. Section 588-2, Hawaii Revised Statutes, is amended to read as follows:

“§588-2 Definitions of child abuse. For purposes of this chapter:

“Child sexual abuse” means any of the offenses described under chapter 707, part V, when committed ~~[on]~~ against a person under the age of eighteen years or as set forth in paragraph (2) of the definition of “harm” in section ~~[587-2.]~~ 587A-4.

“Serious physical child abuse” means any of the offenses described in paragraph (1) of the definition of “harm” set forth in section ~~[587-2]~~ 587A-4 when the offense rises to the degree of a felony as defined in section 701-107.”

PART III

SECTION 20. Section 353G-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Anyone receiving drug test results or assessment results under subsection (a) shall keep that information confidential in accordance with the requirements of Title 42 United States Code [section 290dd-3.] Section 290dd-2.”

SECTION 21. Section 353G-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Except as provided in this chapter, any information obtained as a result of an assessment program or a treatment program, including positive drug tests, shall be kept confidential in accordance with the requirements of Title 42 United States Code [section 290dd-3.] Section 290dd-2.”

PART IV

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval.
(Approved May 4, 2011.)

Notes

- 1. "and" should be underscored.
- 2. Prior to amendment "and" appeared here.

ACT 44

H.B. NO. 1053

A Bill for an Act Relating to National Dental Hygiene Examinations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 447-1, Hawaii Revised Statutes, is amended to read as follows:

"§447-1 Who may become dental hygienists; fees. (a) Any person:

- (1) Eighteen years of age or over;
- (2) ~~[Holding and having]~~ Who has a diploma or proper certificate of graduation from a dental hygiene school accredited by the American Dental Association ~~[(A.D.A.)]~~ Commission on Dental Accreditation ~~[requiring]~~ that requires at least a two year course~~[-];~~ and is recognized by the board of dental examiners; ~~[and]~~
- (3) ~~[Having]~~ Who has been officially certified in the administration of intra-oral infiltration local anesthesia and intra-oral block anesthesia by an accredited dental hygiene school or by a certification program previously approved by the board; and
- (4) Who has passed the National Board Dental Hygiene Examination;

upon written application made to and filed with the board may be examined for qualification as a dental hygienist.

~~[The]~~ An application ~~[for examination]~~ shall be accompanied by the applicant's certificate of graduation from an accredited dental hygiene school ~~[together with]~~, documentary proof of the applicant's certification in the administration of intra-oral infiltration local anesthesia and intra-oral block anesthesia~~[-];~~ and documentary proof of the applicant's passage of the National Board Dental Hygiene Examination. At the time of filing the application, the applicant shall pay to the board an application ~~[and examination fees;]~~ fee, which ~~[fees;]~~ together with all other fees or charges in this chapter, shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be deposited to the credit of the compliance resolution fund established pursuant to section 26-9(o).

(b) The board shall require an applicant to take and pass the State's examination or one of the following four regional clinical examinations given after February 1, 2005, by~~[-]~~ the:

- (1) ~~[The]~~ Western Regional Examining Board;
- (2) ~~[The]~~ Central Regional Dental Testing Service, Inc.;
- (3) ~~[The]~~ Southern Regional Testing Agency, Inc.; or
- (4) ~~[The]~~ North East Regional Board of Dental Examiners~~[-], Inc.~~
- (c) ~~[Once a national examination is available;]~~ In addition to the requirements of subsection (a), an applicant shall take and pass ~~[the]~~ a national clinical examination~~[-];~~ once a national clinical examination becomes available and neither the state examination nor any regional examination shall be accept-

ed; provided that an applicant who has taken and passed the state or a regional examination after February 1, 2005, but prior to the availability of a national examination shall be deemed to have met the board's examination requirement.

(d) If ~~[the]~~ an applicant successfully passes the examination~~[;]~~ required by subsections (b) and (c), the applicant shall be licensed to practice as a dental hygienist in the State. Every licensed dental hygienist, before entering practice, shall pay the board a license fee. On or before December 31 of each odd-numbered year, every licensed dental hygienist ~~[desiring to begin or continue]~~ beginning or continuing to practice in the State shall pay to the board a fee for ~~[the]~~ biennial licensure ~~[thereof]~~. The failure, neglect, or refusal of any duly licensed dental hygienist to pay the biennial licensure fee shall constitute a forfeiture of the license~~[, but];~~ provided that the license may be restored upon written application ~~[therefor]~~ and payment to the board of a restoration fee.

(e) An applicant's or licensed dental hygienist's competence to administer intra-oral infiltration local anesthesia shall be demonstrated by certification in the administration of intra-oral infiltration local anesthesia by an accredited dental hygiene school or by a certification program previously approved by the board. ~~[In addition, an]~~ An applicant's or licensed dental hygienist's competence to administer intra-oral block anesthesia shall be demonstrated by proof of successful completion of a course of study in accordance with standards provided for in this chapter~~[;]~~ and the issuance of a certificate or other program documentation listing the intra-oral block anesthesia categories in which the applicant or licensed dental hygienist has acquired knowledge and proficiency.

The applicant or licensed dental hygienist shall ~~[also]~~ submit documentation of ~~[the]~~ course content when submitting ~~[the certificate.]~~ certification in the administration of intra-oral infiltration local anesthesia and intra-oral block anesthesia as required by subsection (a). The board shall certify that the applicant or licensed dental hygienist has met the requirements of this chapter~~[; provided that the licensed dental hygienist's administration of intra-oral block anesthesia shall be under the direct supervision of a licensed dentist and shall be for those categories of intra-oral block anesthesia listed on the course of study certificate submitted to the board]~~.

(f) No person shall practice dental hygiene, either gratuitously or for pay, or shall offer or attempt so to practice, or shall advertise or announce publicly or privately as being prepared or qualified so to practice~~[;]~~ without having a license as provided in this section ~~[provided, nor shall any]~~. A licensed dental hygienist shall practice [except] only under the supervision of a licensed dentist as provided in this chapter; provided[-] that a licensed dental hygienist shall administer under the direct supervision of a licensed dentist only those categories of intra-oral block anesthesia listed in the course content submitted to the board pursuant to subsection (a)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 4, 2011.)

A Bill for an Act Relating to Environmental Impact Statements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 87, Session Laws of Hawaii 2009, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, ~~[2011-]~~ 2013.”

SECTION 2. The office of environmental quality control shall report findings and recommendations, including proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2012, regarding issues related to the application of chapter 343, Hawaii Revised Statutes, and the effectiveness of Act 87, Session Laws of Hawaii 2009.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2011.

(Approved May 5, 2011.)

A Bill for an Act Relating to the Counties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide savings in manpower, time, and costs to the counties and requestors of easements by eliminating the public auction requirement in the disposition of easements. The counties receive many requests in which private property owners need easements for specific purposes over county property. The requested easements benefit only the property owners. However, because of the public auction requirement, the counties are required to set up public auctions even after obtaining county council approvals for the easements. The elimination of the public auction requirement will delete a timely, costly, and unnecessary process in the granting of the easements. Conducting public auctions for easements implies that the interests in the county property are being offered on a fair and equal basis to the public. However, an easement request over county property will generally only benefit the requestor and will not have any detrimental impact on other requestors because of the nonexclusivity of the easements. Obtaining the prior approvals of the county council for the easements at public hearings provides the public forum and review of the easement grants. This Act does not affect easements for any governmental or public utility purpose or for chilled water and seawater distribution systems for renewable energy seawater air conditioning district cooling systems, which the counties will continue to grant, sell, or otherwise dispose of by negotiation and without public auction.

SECTION 2. Section 46-66, Hawaii Revised Statutes, is amended to read as follows:

“§46-66 Disposition of real property. Notwithstanding any other law to the contrary, each county, subject to the approval of the council, may grant, sell, or otherwise dispose of any easement~~[-]~~ for particular purposes in perpetuity by direct negotiation or otherwise, subject to reverter to the county upon the termination or abandonment of the specific purpose for which the easement was granted, including easements over, under, through, and across land bordering the ocean~~[-, at public auction; provided that any easement]~~ and easements for any governmental or public utility purpose or for chilled water and seawater distribution systems for renewable energy seawater air conditioning district cooling systems ~~[may be granted, sold, or otherwise disposed of by negotiation without public auction].”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 5, 2011.)

ACT 47

H.B. NO. 439

A Bill for an Act Relating to Evidence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 626-1, Hawaii Revised Statutes, is amended by amending rule 303, subsection (c), to read as follows:

“(c) Presumptions. The following presumptions, and all other presumptions established by law that fall within the criteria of subsection (a) of this rule, are presumptions imposing the burden of producing evidence:

- (1) Money delivered by one to another. Money delivered by one to another is presumed to have been due to the latter~~[-]~~;
- (2) Thing delivered by one to another. A thing delivered by one to another is presumed to have belonged to the latter~~[-]~~;
- (3) Obligation delivered up to the debtor. An obligation delivered up to the debtor is presumed to have been paid~~[-]~~;
- (4) Obligation possessed by creditor. An obligation possessed by a creditor is presumed not to have been paid~~[-]~~;
- (5) Payment of earlier rent or installments. The payment of earlier rent or installments is presumed from a receipt for later rent or installments~~[-]~~;
- (6) Things possessed. The things ~~[which]~~ that a person possesses are presumed to be owned by the person~~[-]~~;
- (7) Exercise of act of ownership. A person who exercises acts of ownership over property is presumed to be the owner of it~~[-]~~;
- (8) Judgment determines, sets forth rights of parties. A judgment, when not conclusive, is presumed to correctly determine or set forth the rights of the parties, but there is no presumption that the facts essential to the judgment have been correctly determined~~[-]~~;
- (9) Writing. A writing is presumed to have been truly dated~~[-]~~;
- (10) Letter properly addressed and mailed. A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail~~[-]~~;

- (11) Trustee’s conveyance to a particular person. A trustee or other person, whose duty it was to convey real property to a particular person, is presumed to have actually conveyed the real property to the person when such presumption is necessary to perfect title of such person or the person’s successor in interest[-];
- (12) Ancient document affecting real or personal property interest. A deed or will or other writing purporting to create, terminate, or affect an interest in real or personal property is presumed authentic if:
 - (A) It is at least twenty years old;
 - (B) It is in such condition as to create no reasonable suspicion concerning its authenticity;
 - (C) It was kept, or if found was found, in a place where such writing, if authentic, would be likely to be kept or found; and
 - (D) Persons having an interest in the matter have been generally acting as if it were authentic[-];
- (13) Book or other material purporting to be published by public authority. A book or other material purporting to be printed [øf], published, or posted to an internet website by public authority is presumed to have been so printed [øf], published[-], or posted;
- (14) Book or internet website purporting to contain reports of adjudged cases. A book or government website purporting to contain reports of cases adjudged in the tribunals of the state or nation where the book is published or from which the government website is maintained is presumed to contain correct reports of such cases[-];
- (15) Continuation of a fact, condition, or state. A fact, condition, or state of things is presumed to continue[-]; and
- (16) Paid bills. A bill for goods or services that has been paid is presumed to be authentic and to embody fair and reasonable charges for the itemized goods or services.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved May 5, 2011.)

ACT 48

S.B. NO. 651

A Bill for an Act Relating to Mortgage Foreclosures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 667, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . MORTGAGE FORECLOSURE DISPUTE RESOLUTION

§667-A Applicability. (a) This part shall apply to nonjudicial foreclosures conducted by power of sale under parts I and II, of residential real property that is occupied by one or more mortgagors who are owner-occupants.

(b) This part shall not apply to actions by an association to foreclose on a lien for amounts owed to the association that arise under a declaration filed pursuant to chapter 514A or 514B, or to a mortgagor who has previously participated in dispute resolution under this part for the same property on the same mortgage loan.

(c) This part shall not apply to a power of sale foreclosure that has been converted to a judicial foreclosure action pursuant to section 667-U.

§667-B Definitions. As used in this part:

“Approved budget and credit counselor” means a budget and credit counseling agency that has received approval from a United States trustee or bankruptcy administrator to provide instructional courses concerning personal financial management pursuant to Title 11 United States Code Section 111.

“Approved housing counselor” means a housing counseling agency that has received approval from the United States Department of Housing and Urban Development to provide housing counseling services pursuant to Section 106(a)(2) of the Housing and Urban Development Act of 1968, Title 12 United States Code Section 1701x.

“Association” has the same meaning as in sections 514B-3 and 421J-2.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Dispute resolution” means a facilitated negotiation between a mortgagor and mortgagee for the purpose of reaching an agreement for mortgage loan modification or other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is unavoidable.

“Mortgagee” has the same meaning as the term is defined in section 667-21.

“Mortgagor” has the same meaning as the term is defined in section 667-21.

“Neutral” means a person who is a dispute resolution specialist assigned to facilitate the dispute resolution process required by this part.

“Owner-occupant” means a person, at the time that a notice of default and intention to foreclose is served on the mortgagor under the power of sale:

- (1) Who owns an interest in the residential property, and the interest is encumbered by the mortgage being foreclosed; and
- (2) For whom the residential property is and has been the person’s primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served.

§667-C Mortgage foreclosure dispute resolution program; administration.

(a) There is established in the department a mortgage foreclosure dispute resolution program to provide an owner-occupant an opportunity to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.

(b) The judiciary, through the center for alternative dispute resolution, shall provide assistance to the department in program matters including:

- (1) Contract procurement;

- (2) Performance oversight, such as monitoring compliance with the program requirements; and
- (3) Management services to oversee any contract between the department and a private organization retained by the department to provide dispute resolution services or personnel, including providing the department with monthly status reports and evaluations.

The department and the judiciary shall execute a memorandum of understanding that establishes their rights and responsibilities relating to the mortgage foreclosure dispute resolution program, which may be amended from time to time.

(c) The department is authorized to contract with county, state, or federal agencies, and with private organizations for the performance of any of the functions of this part. These contracts shall not be subject to chapter 103D or 103F.

§667-D Availability of dispute resolution required before foreclosure. Before a public sale may be conducted pursuant to section 667-5 or 667-25 for a residential property that is occupied by an owner-occupant as a primary residence, the foreclosing mortgagee shall, at the election of the owner-occupant, participate in the mortgage foreclosure dispute resolution program under this part to attempt to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.

§667-E Notice of dispute resolution availability required. (a) A foreclosure notice served pursuant to section 667-5 or 667-22(e) shall include notice that the mortgagee is required, at the election of an owner-occupant, to participate in the mortgage foreclosure dispute resolution program pursuant to this part to attempt to avoid foreclosure or to mitigate damages where foreclosure is unavoidable.

(b) The notice required by subsection (a) shall be printed in not less than fourteen-point font and include:

- (1) The name and contact information of the mortgagor and the mortgagee;
- (2) The subject property address and legal description, including tax map key number and the certificate of title number if within the land court's jurisdiction;
- (3) The name and contact information of a person or entity authorized to negotiate a loan modification on behalf of the mortgagee;
- (4) A statement that the mortgagor shall consult with an approved housing counselor or an approved budget and credit counselor at least thirty days prior to the first day of a scheduled dispute resolution session;
- (5) Contact information for all local approved housing counselors;
- (6) Contact information for all local approved budget and credit counselors;
- (7) A statement that the mortgagor electing to participate in the mortgage foreclosure dispute resolution program shall provide a certification under penalty of perjury to the department that the mortgagor is an owner-occupant of the subject property, including supporting documentation;
- (8) A general description of the information that an owner-occupant electing to participate in the mortgage foreclosure dispute resolution program is required to provide to participate in the program as described under section 667-J(c)(2);

- (9) A statement that the owner-occupant shall elect to participate in the mortgage foreclosure dispute resolution program pursuant to this part no later than thirty days after the department's mailing of the notice or the right shall be waived.

§667-F Mortgagee's filing of notice with department; filing fee. (a) Within three days after a mortgagee serves a foreclosure notice on an owner-occupant pursuant to section 667-5 or 667-22, the mortgagee shall file the foreclosure notice with the department and pay a filing fee of \$250, which shall be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-P.

(b) Violation of this section shall constitute an unfair and deceptive act or practice subject to section 480-2.

§667-G Notification to mortgagor by department. Within ten days after the mortgagee's filing of a notice of default and intention to foreclose with the department, the department shall mail a written notification by registered or certified mail to the mortgagor that a notice of default and intention to foreclose has been filed with the department. The notification shall inform the mortgagor of an owner-occupant's right to elect to participate in the foreclosure dispute resolution program and shall include:

- (1) Information about the mortgage foreclosure dispute resolution program;
- (2) A form for an owner-occupant to elect or to waive participation in the mortgage foreclosure dispute resolution program pursuant to this part that shall contain instructions for the completion and return of the form to the department and the department's mailing address;
- (3) A statement that the mortgagor electing to participate in the mortgage foreclosure dispute resolution program shall provide a certification under penalty of perjury to the department that the mortgagor is an owner-occupant of the subject property, including a description of acceptable supporting documentation as required by section 667-H(a)(2);
- (4) A statement that the owner-occupant shall elect to participate in the mortgage foreclosure dispute resolution program pursuant to this part no later than thirty days after the department's mailing of the notice or the owner-occupant shall be deemed to have waived the option to participate in the mortgage foreclosure dispute resolution program;
- (5) A description of the information required under section 667-J(c)(2) that the owner-occupant shall provide to the mortgagee and the neutral assigned to the dispute resolution;
- (6) A statement that the owner-occupant shall consult with an approved housing counselor or approved budget and credit counselor at least thirty days prior to the first day of a scheduled dispute resolution session;
- (7) Contact information for all local approved housing counselors;
- (8) Contact information for all local approved budget and credit counselors; and
- (9) Contact information for the department.

The notification shall be mailed to the subject property address and any other addresses for the mortgagor as provided in the mortgagee's notice of dispute

resolution under 667-E and the foreclosure notice under section 667-5 or 667-22(a).

§667-H Owner-occupant's election of dispute resolution; owner-occupant program fee; right to dispute resolution waived. (a) An owner-occupant elects to participate in the mortgage foreclosure dispute resolution program by returning to the department:

- (1) The completed program election form provided pursuant to section 667-G(2);
- (2) Certification under penalty of perjury that the mortgagor is an owner-occupant, accompanied with any supporting documentation, including copies of recent utility billing statements, voter registration records, real estate property tax records, or state identification forms; and
- (3) A program fee of \$300.

The completed form and fees shall be received by the department no later than thirty days after mailing of the department's notification pursuant to section 667-G.

(b) If the completed form and fee are not received within the required time period, the owner-occupant shall be deemed to have waived any right to participate in the mortgage foreclosure dispute resolution program with respect to the subject property and the foreclosure notice filed with the department.

(c) If the owner-occupant does not elect to participate in dispute resolution pursuant to this part, the department shall notify the mortgagee within ten days of receiving an election form indicating nonelection or the termination of the thirty-day time period for election. After receiving the department's notification, the mortgagee may proceed with the nonjudicial foreclosure process according to the process provided in part I or part II of this chapter, as applicable.

§667-I Notification of opening a dispute resolution case; mortgagee's program fee. (a) If an owner-occupant elects to participate in the mortgage foreclosure dispute resolution program, the department shall open a dispute resolution case. Within twenty days of receipt of the owner-occupant's election form and fee in accordance with section 667-H, the department shall mail written notification of the case opening to the parties by registered mail, return receipt requested, which shall include:

- (1) Notification of the date, time, and location of the dispute resolution session;
- (2) An explanation of the dispute resolution process;
- (3) Information about the dispute resolution program requirements; and
- (4) Consequences and penalties for noncompliance.

The dispute resolution session shall be scheduled for a date no less than thirty and no more than sixty days from the date of the notification of case opening, unless mutually agreed to by the parties and the neutral.

(b) Within fourteen days of the date of the mailing of the written notification, the mortgagee shall pay a program fee of \$300 to the department.

(c) The written notification of a case opening under this section shall operate as a stay of the foreclosure proceeding in accordance with section 667-M, and may be filed or recorded, as appropriate, at the land court or bureau of conveyances.

§667-J Parties; requirements; process. (a) The parties to a dispute resolution process conducted under this part shall consist of the owner-occupant or the owner-occupant's representative, and the mortgagee or the mortgagee's representative; provided that:

- (1) A representative of the mortgagee who participates in the dispute resolution shall be authorized to negotiate a loan modification on behalf of the mortgagee or shall have, at all stages of the dispute resolution process, direct access by telephone, videoconference, or other immediately available contemporaneous telecommunications medium to a person who is so authorized;
 - (2) The mortgagee and owner-occupant may be represented by counsel; and
 - (3) The owner-occupant may be assisted by an approved housing counselor or approved budget and credit counselor.
- (b) No fewer than thirty days prior to the first day of a scheduled dispute resolution session pursuant to this part, the owner-occupant shall consult with an approved housing counselor or approved budget and credit counselor.
- (c) The parties shall comply with all information requests from the department or neutral. No less than fifteen days prior to the first day of the scheduled dispute resolution session:
- (1) The mortgagee shall provide to the department and the mortgagor:
 - (A) A copy of the promissory note, signed by the mortgagor, including any endorsements, allonges, amendments, or riders to the note evidencing the mortgage debt;
 - (B) A copy of the mortgage document and any amendments, riders, or other documentation evidencing the mortgagee's right of nonjudicial foreclosure and interest in the property including any interest as a successor or assignee; and
 - (C) Financial records and correspondence that confirm the mortgage loan is in default.
 - (2) The owner-occupant shall provide to the department and the mortgagee:
 - (A) Documentation showing income qualification for a loan modification, including any copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or any other income that the owner-occupant deems relevant to the owner-occupant's financial ability to repay the mortgage;
 - (B) Any records or correspondence available which may dispute that the mortgage loan is in default;
 - (C) Any records or correspondence available evidencing a loan modification or amendment;
 - (D) Any records or correspondence available that indicate the parties are currently engaged in bona fide negotiations to modify the loan or negotiate a settlement of the delinquency;
 - (E) Names and contact information for housing counselors, approved budget and credit counselors, or representatives of the mortgagee, with whom the owner-occupant may have or is currently working with to address the delinquency; and
 - (F) Verification of counseling by an approved housing counselor or approved budget and credit counselor.
- (d) The dispute resolution session shall consist of at least one meeting lasting no more than three hours, which may be extended by the equivalent of

one additional three-hour session on the same or a different day at the neutral's discretion.

The parties shall be present in person at the dispute resolution session; provided that a party may submit a written request to the department at least fourteen days prior to the scheduled dispute resolution session to participate through telephone, videoconference, or other contemporaneous telecommunications medium. A request to participate through a telecommunications medium shall be granted only for good cause and upon agreement of the neutral and the other party to the dispute resolution. For purposes of this subsection, "good cause" means an event or circumstance outside of the requesting party's control that makes in-person participation impossible. The neutral shall have the discretion to postpone a dispute resolution session in order to allow the requesting party to participate in person; provided that postponement shall not delay the dispute resolution process beyond timelines established by this part.

(e) A dispute resolution process conducted pursuant to this part shall use the calculations, assumptions, and forms established by the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website or a different program or process if agreed to by both parties and the neutral.

(f) The dispute resolution process shall conclude within sixty days from the first scheduled meeting between the parties to the dispute resolution and the neutral; provided that the neutral shall have the authority to extend this period. Nothing in this part shall be construed to require the dispute resolution process to take the full sixty days allotted to reach a negotiated agreement.

§667-K Outcome of dispute resolution; neutral's closing report. (a) Within ten days from the conclusion of the dispute resolution, the neutral shall file a closing report with the department, which verifies the parties' presence at the session, compliance with the requirements of this part, and reports whether the parties reached an agreement to resolve the dispute and the date of the dispute resolution's conclusion. Upon receipt of the neutral's closing report, the department shall close the case. The department shall forward a written copy of the neutral's closing report by registered or certified mail to the parties within five days after receipt from the neutral.

(b) If, despite the parties' participation in the dispute resolution process and compliance with the requirements of this part, the parties are not able to come to an agreement, the neutral shall file a closing report with the department that the parties met the program requirements. The mortgagee may file or record the report at the bureau of conveyances or the land court, as appropriate. Upon recording of the report pursuant to this subsection, the foreclosure process shall resume along the timeline as it existed on the date before the mortgagor elected dispute resolution, and may proceed as otherwise provided by law. The mortgagee shall notify the mortgagor of the recording date and document number of this report and the deadline date to cure default in an amended foreclosure notice. Nothing in this subsection shall be construed to require the neutral to wait the full sixty days allotted for dispute resolution to determine that the parties were unable to reach an agreement and file a report.

(c) If the parties have complied with the requirements of this part and have reached an agreement, the agreement shall be memorialized in a settlement document signed by the parties or their authorized representatives. If the parties or their authorized representatives participate in the dispute resolution session in person, the settlement document shall be signed in the presence of the neutral. If any of the parties or their authorized representatives participate in the dispute resolution through telephone, videoconference, or other immediately available

contemporaneous telecommunications medium, the settlement document shall be signed and returned to the neutral no later than ten days after the conclusion of the dispute resolution session. The parties shall be responsible for drafting any agreement reached, and for filing or recording with the land court or the bureau of conveyances, as appropriate, and enforcing the settlement document. The neutral shall file the settlement document with the neutral's closing report. The settlement document shall be a contract between the parties and shall be enforceable in a private contract action in a court of appropriate jurisdiction in the event of breach by either party. If the settlement document allows for foreclosure or other transfer of the subject property, the stay of the foreclosure under section 667-M shall be released upon filing or recording the settlement document with the land court or bureau of conveyances, as appropriate. Thereafter, the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate.

(d) If the parties to a dispute resolution process reach an agreement which resolves the matters at issue in the dispute resolution before the first day of the scheduled dispute resolution session scheduled pursuant to this section, the parties shall notify the neutral by that date. The neutral shall thereafter issue a closing report that the parties have reached an agreement prior to the commencement of a dispute resolution session. If the agreement provides for foreclosure, the parties shall memorialize the agreement in a writing signed by both parties and provided to the neutral. Any agreement authorizing foreclosure shall be attached to the neutral's closing report. The parties may file or record the report at the bureau of conveyances or the land court, as appropriate. If the agreement authorizes foreclosure, the stay of the foreclosure under section 667-M shall be released upon filing or recording with the land court or bureau of conveyances, as appropriate. Thereafter, the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate. No fees shall be refunded if the parties come to an agreement prior to a dispute resolution session conducted pursuant to this part.

§667-L Noncompliance with requirements; statement. (a) The neutral's closing report shall indicate if the mortgagee or the owner-occupant failed to comply with requirements of the mortgage foreclosure dispute resolution program.

- (1) In the case of the mortgagee, failure to comply with the requirements of the program may consist of:
 - (A) Participation in dispute resolution without the authority to negotiate a loan modification or without access at all stages of the dispute resolution process to a person who is so authorized;
 - (B) Failure to provide the required information or documents;
 - (C) Refusal to cooperate or participate in dispute resolution; or
 - (D) Refusal or failure to pay program fees under section 667-I in a timely manner.
 - (2) In the case of the owner-occupant, failure to comply with the requirements of the program may consist of:
 - (A) Failure to provide the required information or documents; or
 - (B) Refusal to cooperate or participate in dispute resolution.
- (b) If the neutral determines that the noncompliance was unjustified as a result of circumstances within a party's control, sanctions may be imposed on the noncompliant party as follows:
- (1) Sanctions against a mortgagee for unjustified noncompliance with the program shall include a stay of the foreclosure under section

667-M and a fine payable to the owner-occupant not to exceed \$1,500; or

- (2) Sanctions against an owner-occupant for unjustified noncompliance with the program shall include a removal of the stay of the foreclosure pursuant to section 667-M(b) and a fine payable to the mortgagee not to exceed \$1,500.

§667-M Stay of nonjudicial foreclosure proceedings. (a) The written notification of a case opening under section 667-I shall operate as a stay of the foreclosure proceeding, and may be filed or recorded, as appropriate, at the land court or bureau of conveyances.

(b) Upon a stay pursuant to subsection (a), a mortgagee shall not foreclose upon a mortgage:

- (1) Until the neutral's report confirming either that the parties have been unable to reach an agreement under section 667-K(b) or the parties have reached an agreement that authorizes foreclosure under section 667-K (c) or (d) is filed with the department;
- (2) If a statement of noncompliance has been issued against the mortgagee pursuant to section 667-L; or
- (3) Unless otherwise provided by law or court order.

§667-N Confidentiality. Personal financial information and other sensitive personal information, including information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness which is disclosed by the parties in the course of the mortgage foreclosure dispute resolution program, shall be confidential and not subject to public disclosure under chapter 92F or any other state law.

§667-O Neutral qualifications; status and liability. A neutral shall possess sufficient knowledge in the areas of law, real estate, or finance and shall receive sufficient training to be able to effectuate the purposes of this part.

A neutral shall not be liable for any act or omission that occurs in relation to the administration or operation of the mortgage foreclosure dispute resolution program. A neutral shall not be a necessary party to, called as a witness in, or subject to any subpoena duces tecum for the production of documents in any arbitral, judicial, or administrative proceeding that arises from or relates to the mortgage foreclosure dispute resolution program.

§667-P Mortgage foreclosure dispute resolution special fund. (a) There is established in the state treasury a special fund to be known as the mortgage foreclosure dispute resolution special fund to be administered by the department to implement and operate the mortgage foreclosure dispute resolution program established by this part. Moneys collected as fees or fines under sections 454M-10, 667-F, 667-H, 667-I, and 667-U, for the mortgage dispute resolution program and contributions from the sources identified under subsection (b) shall be deposited in the fund. Interest earned from the balance of the fund shall become a part of the fund.

(b) All persons who record an affidavit in the land court pursuant to section 501-118, or who record a conveyance document in the bureau of conveyances for an owner-occupied property subject to a nonjudicial power of sale foreclosure shall pay a fee of \$100 which shall be deposited into the mortgage foreclosure dispute resolution special fund on a quarterly basis."

SECTION 2. Chapter 454M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§454M- Unlicensed foreclosure actions voided. Any action taken in connection with a mortgage foreclosure under chapter 667 by a nonexempt person who engages in the business of mortgage servicing without a license as provided in this chapter shall be void for purposes of chapter 667.”

SECTION 3. Chapter 667, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

“§667-Q Recordation of foreclosure notice. The foreclosing mortgagee may record a copy of the foreclosure notice with the assistant registrar of the land court or the bureau of conveyances, as appropriate, in a manner similar to recordation of notices of pendency of action under section 501-151 or section 634-51, as applicable. The recorded notice shall have the same effect as a notice of pendency of action. From and after the recordation of the notice, any person who becomes a purchaser or encumbrancer of the mortgaged property shall be deemed to have constructive notice of the power of sale foreclosure and shall be bound by the foreclosure.

§667-R Location of public sale following power of sale foreclosure. The public sale of the mortgaged property shall be held only on grounds or at facilities under the administration of the State, as follows:

- (1) At the state capitol, for a public sale of mortgaged property located in the city and county of Honolulu;
- (2) At a state facility in Hilo, for a public sale of mortgaged property located in the eastern portion of the county of Hawaii;
- (3) At a state facility in Kailua-Kona, for a public sale of mortgaged property located in the western portion of the county of Hawaii;
- (4) At a state facility in the county seat of Maui, for a public sale of mortgaged property located in the county of Maui; and
- (5) At a state facility in the county seat of Kauai, for a public sale of mortgaged property located in the county of Kauai;

as designated by the department of accounting and general services; provided that no public sale shall be held on grounds or at facilities under the administration of the judiciary. The public sale shall be held during business hours on a business day.”

SECTION 4. Chapter 667, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

“§667-S Foreclosure notice; planned communities; condominiums; cooperative housing projects. Notwithstanding any law or agreement to the contrary, any person who forecloses on a property under this part within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project shall notify, by way of registered or certified mail, the board of directors of the planned community association, the association of owners of the condominium project, or the cooperative housing project in which the property to be foreclosed is located, of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment or unit, or cooperative apartment that is the subject of the foreclosure

and identify the name or names of the person or persons bringing foreclosure proceedings. This section shall not apply when the planned community association, condominium association of owners, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of owners, or cooperative housing corporation.

§667-T Foreclosure of association lien; cure of default. If a unit owner notifies the association or its attorney by certified mail return receipt requested or by hand-delivery within five business days following a response to the unit owner's request for the amount to cure a default, together with an estimated amount of the foreclosing association's attorneys' fees and costs, and all other fees and costs related to the default estimated to be incurred by the foreclosing association, that it intends to cure the default, the association shall allow sixty calendar days to the unit owner to cure the default. The association shall not reject a reasonable payment plan for cure of the default; provided that a reasonable plan shall require the owner to pay at a minimum the current maintenance fee and some amount owed on the past due balance. From and after the date that the unit owner gives written notice to the association of its intent to cure the delinquency, any nonjudicial foreclosure of the lien shall be stayed pending the sixty-day period or a longer period that is agreed upon by the parties."

SECTION 5. Chapter 667, Hawaii Revised Statutes, is amended by adding three new sections to part III to be appropriately designated and to read as follows:

"§667-U Conversion to judicial foreclosure; residential property; conditions. (a) An owner-occupant of a residential property that is subject to nonjudicial foreclosure under part I or II may convert the action to a judicial foreclosure provided that:

- (1) A petition conforming to section 667-V shall be filed with the circuit court in the circuit where the residential property is located, stating that the owner-occupant of the property elects to convert the nonjudicial foreclosure to a judicial foreclosure proceeding no later than thirty days after the foreclosure notice is served on the owner-occupant as required by section 667-5 or 667-22;
- (2) Within forty-five days of the filing of the petition, all owner-occupants and mortgagors of an interest in the residential property whose interests are pledged or otherwise encumbered by the mortgage that is being foreclosed and all persons who have signed the promissory note or other instrument evidencing the debt secured by the mortgage that is being foreclosed, including without limitation co-obligors and guarantors, shall file a statement in the circuit court action that they agree to submit themselves to the judicial process and the jurisdiction of the circuit court; provided further that if this condition is not satisfied, the circuit court action may be dismissed with prejudice as to the right of any owner-occupant to convert the action to a judicial proceeding, and the mortgagee may proceed nonjudicially;
- (3) Filing a petition pursuant to paragraph (1) shall automatically stay the nonjudicial foreclosure action unless and until the judicial proceeding has been dismissed;
- (4) The person filing the petition pursuant to paragraph (1) shall have an affirmative duty to promptly notify the Hawaii attorney who is

handling the nonjudicial foreclosure about the filing of the complaint for conversion;

- (5) All parties joined in the converted judicial proceeding may assert therein any claims and defenses that they could have asserted had the action originally been commenced as a judicial foreclosure action; and
- (6) Notwithstanding chapter 607, the fee for filing the petition shall be not more than \$525, of which \$250 shall be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-P; provided that if the mortgage foreclosure dispute resolution program under part has not yet been implemented, the filing fee shall be not more than \$300.
 - (b) This section shall not apply to foreclosures of association liens that arise under a declaration filed pursuant to chapter 514A or 514B.
 - (c) This section shall not apply to a foreclosure for which the mortgagor has elected to participate in the mortgage foreclosure dispute resolution program pursuant to part .
 - (d) The judiciary may create and adopt a form for a conversion petition.

§667-V Petition for conversion; residential property; required contents. A petition filed pursuant to section 667-U shall contain at a minimum:

- (1) A caption setting forth the name of the court, the title of the action, and the file number; provided that the title of the action shall include the names of the filing party as petitioner and the foreclosing party as the respondent;
- (2) The name, mailing address, and telephone number of the filing party;
- (3) The address or tax map key number and the certificate of title or transfer certificate of title number if within the land court's jurisdiction, of the property subject to the foreclosure action;
- (4) A statement identifying all other owner-occupants and mortgagors of the property whose interests are pledged or otherwise encumbered by the mortgage that is being foreclosed and all persons who have signed the promissory note or other instrument evidencing the debt secured by the mortgage that is being foreclosed, including without limitation co-obligors and guarantors;
- (5) A certification under penalty of perjury that the filing party is an owner-occupant of the subject property and seeks to convert the nonjudicial foreclosure to a judicial proceeding;
- (6) A statement certifying that the filing party served a copy of the petition on the attorney identified in the foreclosure notice under section 667-5 or 667-22 either by personal delivery at, or by postage prepaid United States mail to, the address of the attorney as set forth in the foreclosure notice under section 667-5 or 667-22; and
- (7) A copy of the foreclosure notice that was served on the filing party pursuant to section 667-5 or 667-22 and for which the filing party is seeking to convert to a judicial proceeding.
 - (b) The assignment of parties in the petition for conversion pursuant to subsection (a) shall relate to the petition for conversion only and shall not be construed to affect the assignment of parties in a nonjudicial power of sale foreclosure converted to a judicial foreclosure pursuant to this part.

§667-W Notice of default and intention to foreclose; residential property; required statement on conversion. (a) The foreclosure notice that is served as required under section 667-5 or 667-22 shall include, in addition to the contents required under section 667-5 or 667-22, a statement printed in not less than fourteen-point font as follows:

“IF THE PROPERTY BEING FORECLOSED IS IMPROVED AND USED FOR RESIDENTIAL PURPOSES, AN OWNER-OCCUPANT OF THE PROPERTY (DEFINED IN CHAPTER 667 OF THE HAWAII REVISED STATUTES AS A PERSON WHO, AT THE TIME THIS NOTICE IS SERVED, OWNS AN INTEREST IN THE RESIDENTIAL PROPERTY THAT IS SUBJECT TO THE MORTGAGE BEING FORECLOSED AND THE RESIDENTIAL PROPERTY HAS BEEN THE PRIMARY RESIDENCE CONTINUOUSLY FOR NOT LESS THAN TWO HUNDRED DAYS) HAS THE RIGHT TO CONVERT A NONJUDICIAL FORECLOSURE PROCEEDING TO A JUDICIAL FORECLOSURE WHERE CLAIMS AND DEFENSES MAY BE CONSIDERED BY A COURT OF LAW. TO EXERCISE THIS RIGHT, THE OWNER-OCCUPANT SHALL COMPLETE AND FILE THE ATTACHED FORM WITH THE CIRCUIT COURT IN THE CIRCUIT WHERE THE PROPERTY IS LOCATED WITHIN THIRTY DAYS AFTER SERVICE OF THIS NOTICE.

IN ADDITION, ALL OWNER-OCCUPANTS AND MORTGAGORS OF THE RESIDENTIAL PROPERTY WHOSE INTERESTS HAVE BEEN PLEDGED OR OTHERWISE ENCUMBERED BY THE MORTGAGE THAT IS BEING FORECLOSED AND ALL PERSONS WHO HAVE SIGNED THE PROMISSORY NOTE OR OTHER INSTRUMENT EVIDENCING THE DEBT SECURED BY THE MORTGAGE THAT IS BEING FORECLOSED, INCLUDING, WITHOUT LIMITATION, CO-OBLIGORS AND GUARANTORS, SHALL FILE A STATEMENT IN THE CIRCUIT COURT ACTION THAT THEY AGREE TO SUBMIT TO THE JUDICIAL PROCESS AND THE JURISDICTION OF THE CIRCUIT COURT WITHIN FORTY-FIVE DAYS OF THE FILING OF THE ATTACHED FORM. FAILURE TO SATISFY THIS CONDITION MAY RESULT IN DISMISSAL OF THE CIRCUIT COURT ACTION WITH PREJUDICE.

AN OWNER-OCCUPANT SHALL PROMPTLY NOTIFY THE HAWAII ATTORNEY LISTED IN THIS NOTICE ABOUT THE FILING OF THE CONVERSION FORM.

MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY BE AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS AS AN ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID FORECLOSURE OR TO MITIGATE THE EFFECTS OF FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF AN OWNER-OCCUPANT FILES FOR CONVERSION, DISPUTE RESOLUTION MAY NOT BE AVAILABLE UNLESS ORDERED BY A JUDGE.

A FORECLOSING LENDER WHO COMPLETES A NONJUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY SHALL BE PROHIBITED UNDER HAWAII LAW

FROM PURSUING A DEFICIENCY JUDGMENT AGAINST A MORTGAGOR UNLESS THE DEBT IS SECURED BY OTHER COLLATERAL, OR AS OTHERWISE PROVIDED BY LAW. IF THIS ACTION IS CONVERTED TO A JUDICIAL PROCEEDING, HOWEVER, THEN ALL REMEDIES AVAILABLE TO A LENDER MAY BE ASSERTED, INCLUDING THE RIGHT TO SEEK A DEFICIENCY JUDGMENT.

(b) The statement required by this section shall not be required to be included in the notice of sale published pursuant to 667-5(a)(1) or the public notice of public sale published pursuant to section 667-27.”

SECTION 6. Chapter 667, Hawaii Revised Statutes, is amended by adding six new sections to part III to be appropriately designated and to read as follows:

“§667-X **Definitions.** For purposes of this chapter, “foreclosure notice” shall mean notice of intention to foreclose given pursuant to section 667-5 or notice of default and intention to foreclose prepared pursuant to section 667-22.

§667-Y **Prohibited conduct.** It shall be a prohibited practice for any foreclosing mortgagee to engage in any of the following practices:

- (1) Holding a public sale on a date, at a time, or at a place other than that described in the public notice of the public sale or a properly noticed postponement;
- (2) Specifying a fictitious place in the public notice of the public sale;
- (3) Conducting a postponed public sale on a date other than the date described in the new public notice of the public sale;
- (4) Delaying the delivery of the recorded, conformed copy of the conveyance document to a bona fide purchaser who purchases in good faith for more than forty-five days after the completion of the public sale;
- (5) Completing nonjudicial foreclosure proceedings during short sale escrows with a bona fide purchaser if the short sale offer is at least five per cent greater than the public sale price; provided that escrow is opened within ten days and closed within forty-five days of the public sale; and provided further that a bona fide short sale purchaser shall have priority over any other purchaser;
- (6) Completing nonjudicial foreclosure proceedings during bona fide loan modification negotiations with the mortgagor; or
- (7) Completing nonjudicial foreclosure proceedings against a mortgagor who has been accepted or is being evaluated for consideration for entry into a federal loan modification program before obtaining a certificate or other documentation confirming that the mortgagor is no longer eligible or an active participant of that federal program.

§667-Z **Suspension of foreclosure actions by junior lienholders.** (a) Upon initiation of a foreclosure action pursuant to part I or part II by a foreclosing mortgagee as defined in section 667-21(b), no junior lienholder shall be permitted to initiate or continue a nonjudicial foreclosure pursuant to part I until the foreclosure initiated by the foreclosing mortgagee has been concluded by a judgment issued by a court pursuant to section 667-1, the recording of an affidavit after public sale pursuant to section 667-5 or 667-33, or the filing of a settlement document under the mortgage foreclosure dispute resolution provisions of section 667-K.

(b) Upon initiation of a foreclosure action pursuant to part I or part II by a foreclosing mortgagee as defined in section 667-21(b), no junior lienholder shall be permitted to initiate a nonjudicial foreclosure pursuant to part II during the pendency of a stay pursuant to section 667-M; provided that a junior lienholder may initiate or continue with a nonjudicial foreclosure pursuant to part II if the junior lien foreclosure was initiated before the foreclosure action by the foreclosing mortgagee.

§667-AA Valid notice. (a) Any notices made pursuant to this chapter may be issued only by persons authorized by a foreclosing mortgagee or lender pursuant to an affiliate statement signed by that foreclosing mortgagee or lender and recorded at the bureau of conveyances identifying the agency or affiliate relationship and the authority granted or conferred to that agent or representative.

(b) The bureau of conveyances document number for the affiliate statement required under subsection (a) shall be included in any notice required to be personally served upon the mortgagor or borrower under this chapter.

(c) Any notice provided by a mortgage servicer, including an agent, employee, or representative of that mortgage servicer, shall be issued only by a mortgage servicer that has been listed in the affiliate statement filed by the foreclosing mortgagee or lender under subsection (a); provided further that the mortgage servicer shall be licensed under or otherwise exempt from chapter 454M. The agency relationship or affiliation of the mortgage servicer and the foreclosing mortgagee or lender and any authority granted or conferred to that mortgage servicer shall be described in the affiliate statement filed under both subsection (a) and section 454M-5(a)(4)(F).

§667-AB Actions and communications with the mortgagor in connection with a foreclosure. A foreclosing mortgagee shall be bound by all agreements, obligations, representations, or inducements made on its behalf by its agents including but not limited to its employees, representatives, mortgage servicers, or persons authorized by a foreclosing mortgagee or lender pursuant to an affiliate statement recorded in the bureau of conveyances pursuant to section 667-AA.

For purposes of this section, "foreclosing mortgagee" has the same meaning as in section 667-21.

§667-AC Unfair or deceptive act or practice. Any foreclosing mortgagee who violates this chapter shall have committed an unfair or deceptive act or practice under section 480-2."

SECTION 7. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

"(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485A-202(a)(26) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be

deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, sections 431:10C-115 and 431:10G-107, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, ~~and~~ the condominium education trust fund, section 514B-71[-], and the mortgage foreclosure dispute resolution special fund, section 667-P. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485A-202(a)(26) has complied with chapter 514E or section 485A-202(a)(26);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
- (5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses.”

SECTION 8. Section 454M-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[A] No person [is engaged]~~ shall engage in the business of mortgage servicing ~~[if the person provides those services]~~ in this State ~~[even if]~~ unless the person providing services has ~~[no]~~ a physical presence in the State[-] pursuant to section 454M-5(a)(5).”

SECTION 9. Section 454M-4, Hawaii Revised Statutes, is amended to read as follows:

~~“[§454M-4]~~ **License; fees; renewals[-]; voluntary surrender of license.**

(a) An applicant for licensure shall file an application on a form prescribed by the commissioner and shall pay an application fee of \$500. Each license shall expire on June 30 of each calendar year. A license may be renewed by filing a renewal statement on a form prescribed by the commissioner and paying a renewal fee of \$250, on or before July 1 for licensure for the following year.

(b) The applicant shall submit any other information that the commissioner may require, including the applicant’s:

- (1) ~~[The applicant’s form]~~ Form and place of organization;
- (2) ~~[The applicant’s tax]~~ Tax identification number; and
- (3) ~~[The applicant’s proposed]~~ Proposed method of doing business.

The applicant shall disclose whether the applicant or any of its officers, directors, employees, managers, agents, partners, or members ~~[has]~~ have ever been issued or been the subject of an injunction or administrative order pertaining to any aspect of the lending business, ~~[has]~~ have ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or ~~[has]~~ have ever been convicted of any felony.

(c) A mortgage servicer licensed under this chapter may voluntarily cease business and surrender its license by giving written notice to the commissioner of its intent to surrender its mortgage servicer license. Notice pursuant to this subsection shall be given at least thirty days before the surrender of the license and shall include:

- (1) The date of surrender;
- (2) The name, address, telephone number, facsimile number, and electronic address of a contact individual with knowledge and authority sufficient to communicate with the commissioner regarding all matters relating to the licensee during the period that it was licensed pursuant to this chapter;
- (3) The reason or reasons for surrender;
- (4) The original license issued pursuant to this chapter to the mortgage servicer; and
- (5) If applicable, a copy of all notices to affected borrowers required by the Real Estate Settlement Procedures Act, Title 12 United States Code Section 2601 et seq., or by regulations adopted pursuant to the Real Estate Settlement Procedures Act, of the assignment, sale,

or transfer of the servicing of all relevant loans that the licensee is currently servicing under the license being surrendered.

Voluntary surrender of a license shall be effective upon the date of surrender specified on the written notice to the commissioner as required by this subsection; provided that if a mortgage servicer is required to assign, sell, or transfer the servicing of any loans, the voluntary surrender of the mortgage servicer's license shall be effective upon the effective date of the assignment, sale, or transfer of the servicing of all loans."

SECTION 10. Section 454M-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A mortgage servicer licensed or acting under this chapter, in addition to any other duties imposed by law, shall:

- (1) Safeguard and account for any money handled for the borrower;
- (2) Act with reasonable skill, care, timeliness, promptness, and diligence;
- (3) Disclose to the commissioner in the servicer's license application and each yearly renewal a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities; ~~[and]~~
- (4) File ~~[with the commissioner upon request]~~ a report with each yearly renewal statement in a form and format acceptable to the director detailing the servicer's activities in this State, including:
 - (A) The number of mortgage loans the servicer is servicing;
 - (B) The type and characteristics of ~~[such]~~ loans serviced in this State;
 - (C) The number of serviced loans in default, along with a breakdown of thirty-, sixty-, and ninety-day delinquencies;
 - (D) Information on loss mitigation activities, including details on workout arrangements undertaken;
 - (E) Information on foreclosures commenced in this State; ~~[and]~~
 - (F) The affiliations of the mortgage servicer, including any lenders or mortgagees for which the mortgage servicer provides service, any subsidiary or parent entities of the mortgage servicer, and a description of the authority held by the mortgage servicer through its affiliations; and
 - ~~[(F)]~~ (G) Any other information that the commissioner may require[-]; and
- (5) Maintain an office in the State that is staffed by at least one agent or employee for the purposes of addressing consumer inquiries or complaints and accepting service of process; provided that the mortgage servicer's business constitutes at least a twenty per cent share of the portion of the total mortgage loan service market in the State that was serviced by mortgage servicers licensed under this chapter within the previous calendar year; and provided further that nothing in this section shall prohibit a mortgagee as defined by section 667-21 or a mortgage servicer from contracting with a licensee that maintains an office in this State in conformity with this section for the purposes of addressing consumer inquiries or complaints and accepting service of process."

SECTION 11. Section 454M-10, Hawaii Revised Statutes, is amended to read as follows:

~~“[§454M-10] Penalty.~~ Any person who violates any provision of this chapter may be subject to an administrative fine of at least \$1,000 and not more than \$5,000 ~~\$7,000~~ for each violation[-]; provided that \$1,000 of the fine shall be deposited into the mortgage foreclosure dispute resolution special fund established pursuant to section 667-P.”

SECTION 12. Section 501-151, Hawaii Revised Statutes, is amended to read as follows:

“§501-151 Pending actions, judgments; recording of, notice. No writ of entry, action for partition, or any action affecting the title to real property or the use and occupation thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recording of the judgment. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter “judgment” includes an order or decree having the effect of a judgment.

Notice of the pendency of an action in a United States District Court, as well as a court of the State of Hawaii, may be recorded.

Notice of opening a dispute resolution case as provided in section 667-I may be recorded.

Foreclosure notice as provided in section 667-Q may be recorded.

The party seeking registration of a judgment shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment to be filed or recorded.”

SECTION 13. Section 514A-90, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the ~~[six]~~ twelve months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of ~~[\$3,600-]~~ \$7,200.”

SECTION 14. Section 514B-146, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the ~~[six]~~ twelve months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of ~~[\$3,600.]~~ \$7,200.”

SECTION 15. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fees prescribed by the schedule in this section shall be paid to the clerk of the circuit court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the circuit court; provided that nothing in the schedule shall apply to cases of adults charged with commission of a crime, or to proceedings under section 571-11(1), (2), or (9), ~~[ø]~~ to proceedings under chapter 333F or 334, ~~[ø]~~ to small estates ~~[including decedents’ estates and protection of property of minors and persons under disability]~~ when the amount payable is fixed by another statute~~;~~, or to nonjudicial foreclosures converted to judicial proceedings pursuant to section 667-U; and provided further that the fees prescribed by subsection (c)(32) shall be deposited by the clerk of the circuit court into the judiciary computer system special fund pursuant to section 601-3.7.

For the purpose of this section, “judgment” includes a decree and any order from which an appeal lies.

SCHEDULE

In the application of this schedule, each case assigned a new number or filed under the number previously assigned to a probate, trust, guardianship, or conservatorship, shall carry a fee for the institution or transfer of the action or proceeding as prescribed by part I, and in addition the fees prescribed by part II unless otherwise provided.”

SECTION 16. Section 667-3, Hawaii Revised Statutes, is amended to read as follows:

“**§667-3 Proceeds, how applied.** Mortgage and other creditors shall be entitled to payment according to the priority of their liens, and not pro rata; and judgments of foreclosure and foreclosures by power of sale that are conducted in compliance with this part and for which an affidavit is recorded as required under section 667-5 shall operate to extinguish the liens of subsequent mortgages and liens of the same property, without forcing prior mortgagees or lienors to their right of recovery. The surplus after payment of the mortgage foreclosed, shall be applied pro tanto to the next junior mortgage~~;~~ or lien, and so on to the payment, wholly or in part, of mortgages and liens junior to the one assessed.”

SECTION 17. Section 667-5, Hawaii Revised Statutes, is amended to read as follows:

“**§667-5 Foreclosure under power of sale; notice; affidavit after sale~~;~~; deficiency judgments.** (a) When a power of sale is contained in a mortgage, and where the mortgagee, the mortgagee’s successor in interest, or any person authorized by the power to act in the premises, desires to foreclose under power of sale

upon breach of a condition of the mortgage, the mortgagee, successor, or person shall be represented by an attorney who is licensed to practice law in the State and is physically located in the State. The attorney shall:

- (1) Give notice of the mortgagee's, successor's, or person's intention to foreclose the mortgage and of the sale of the mortgaged property~~;~~ by as follows:

- (A) By serving, not less than twenty-one days before the date of sale, written notice of intent to foreclose on all persons entitled to notice under this part in the same manner as service of a civil complaint under chapter 634 and the Hawaii rules of civil procedure; provided that in the case of nonjudicial foreclosure of a lien by an association against a mortgagor who is not an owner-occupant, the association shall mail the notice by certified or registered mail, not less than twenty-one days before the date of sale, to:

- (i) The unit owner at the address shown in the records of the association and, if different, at the address of the unit being foreclosed; and

- (ii) All mortgage creditors whose names are known or can be discovered by the association; and

- (B) By publication of the notice once in each of three successive weeks [~~f~~, constituting three publications~~];~~ with the last publication to be not less than fourteen days before the day of sale, in a daily newspaper having [a] the largest general circulation in the specific county in which the mortgaged property lies; [~~and~~] provided that for property located in a county with a population of more than one hundred thousand but less than three hundred thousand, the public notice shall be published in the newspaper having the largest circulation expressly in the eastern or western half of the county, corresponding to the location of the subject property;

- (2) Give notice of the mortgagor's right to elect to participate in the mortgage foreclosure dispute resolution program pursuant to section 667-E or to convert the nonjudicial power of sale foreclosure to a judicial foreclosure pursuant to section 667-U; and

~~(2)~~ (3) Give any notices and do all acts as ~~are~~ authorized or required by the power contained in the mortgage.

(b) Copies of the notice required under subsection (a) shall be:

- (1) Filed with the state director of taxation; and

- (2) Posted on the premises not less than twenty-one days before the day of sale.

(c) Upon the request of any person entitled to notice pursuant to this section and sections 667-5.5 and 667-6, the attorney, the mortgagee, successor, or person represented by the attorney shall disclose to the requestor the following information:

- (1) The amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorneys' fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default prior to the auction within five business days of the request; and
- (2) The sale price of the mortgaged property once auctioned.

(d) Any sale, of which notice has been given ~~as aforesaid,~~ pursuant to subsections (a) and (b) may be postponed from time to time by public announcement made by the mortgagee or by ~~some~~ a person acting on the mortgagee's

behalf. Upon request made by any person who is entitled to notice pursuant to section 667-5.5 or 667-6, or this section, the mortgagee or person acting on the mortgagee's behalf shall provide the date and time of a postponed auction, or if the auction is canceled, information that the auction was canceled. The mortgagee, within thirty days after selling the property in pursuance of the power, shall file a copy of the notice of sale and the mortgagee's affidavit, setting forth the mortgagee's acts in the premises fully and particularly, in the bureau of conveyances.

(e) The mortgagee or other person, excluding an association, who completes the nonjudicial foreclosure of a mortgage or other lien on residential property pursuant to this part shall not be entitled to pursue or obtain a deficiency judgment against an owner-occupant of the residential property who, at the time the notice of intent to foreclose is served, does not have a fee simple or leasehold ownership interest in any other real property.

Nothing in this section shall prohibit any other mortgagee or person who holds a lien on the residential property subject to the nonjudicial foreclosure, whose lien is subordinate to the mortgage being foreclosed and is extinguished by the nonjudicial foreclosure sale, from pursuing a monetary judgment against an owner-occupant.

~~[(e) The]~~ (f) Subject to the requirements of part _____, the affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.

~~[(f)]~~ (g) This section is inapplicable if the mortgagee is foreclosing as to personal property only.”

SECTION 18. Section 667-5.5, Hawaii Revised Statutes, is amended to read as follows:

“§667-5.5 Foreclosure notice[-]; planned communities; condominiums; cooperative housing projects. Notwithstanding any law or agreement to the contrary, any person who forecloses on a property under this part within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project shall notify, by ~~[way of]~~ registered or certified mail, the board of directors of the planned community association, the association of owners of the condominium project, or the cooperative housing project in which the property to be foreclosed is located[-] of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment or unit, or cooperative apartment ~~[which]~~ that is the subject of the foreclosure and identify the name or names of the person or persons bringing foreclosure proceedings. This section shall not apply ~~[when]~~ if the planned community association, condominium association of owners, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of owners, or cooperative housing corporation.”

SECTION 19. Section 667-10, Hawaii Revised Statutes, is amended to read as follows:

“§667-10 Power unaffected by transfer; surplus after sale. No sale or transfer by the mortgagor shall impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the mortgaged property, as attorney or agent of the mortgagor, except as otherwise provided by chapters 501 and 502. When public sale is made of the mortgaged property under this ~~[chapter]~~ part, the remainder of the proceeds, if any, shall be paid over

to the owner of the mortgaged property, after deducting the amount of claim and all expenses attending the same.”

SECTION 20. Section 667-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) As used in this part:

“Approved budget and credit counselor” means a budget and credit counseling agency that has received approval from a United States trustee or bankruptcy administrator to provide instructional courses concerning personal financial management pursuant to Title 11 United States Code, Section 111.

“Approved housing counselor” means a housing counseling agency that has received approval from the United States Department of Housing and Urban Development to provide housing counseling services pursuant to Section 106(a)(2) of the Housing and Urban Development Act of 1968, Title 12 United States Code, Section 1701x.

“Association” has the same meaning as the term is defined in section 514B-3.

“Borrower” means the borrower, maker, cosigner, or guarantor under a mortgage agreement.

“Foreclosing mortgagee” means the mortgagee that intends to conduct a power of sale foreclosure; provided that the mortgagee is a federally insured bank, a federally insured savings and loan association, a federally insured savings bank, a depository financial services loan company, a nondepository financial services loan company, a credit union insured by the National Credit Union Administration, a bank holding company, a foreign lender as defined in section 207-11, or an institutional investor as defined in section 454-1.

Unless the context clearly indicates otherwise, as used in this part, a “foreclosing mortgagee” shall encompass all of the following entities:

- (1) The foreclosing mortgagee;
- (2) Any person that has an ownership interest in the promissory note on the mortgage agreement or a security interest represented by the mortgage for the subject property;
- (3) Any mortgage servicer, who services the mortgage loan of the mortgagor; and
- (4) The agents, employees, trustees, and representatives of a lender, the foreclosing mortgagee, a mortgagee, and a mortgage servicer.

“Mailed” means to be sent by regular mail, postage prepaid, and by certified, registered, or express mail, postage prepaid and return receipt requested.

“Mortgage” means a mortgage, security agreement, or other document under which property is mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

“Mortgage agreement” includes the mortgage, the note or debt document, or any document amending any of the foregoing.

“Mortgaged property” means the property that is subject to the lien of the mortgage.

“Mortgagee” means the current holder of record of the mortgagee’s or the lender’s interest under the mortgage, or the current mortgagee’s or lender’s duly authorized agent.

“Mortgagor” means the mortgagor or borrower named in the mortgage and, unless the context otherwise indicates, includes the current owner of record of the mortgaged property whose interest is subject to the mortgage.

“Nonjudicial foreclosure” means foreclosure under power of sale.

“Open house” means a public showing of the mortgaged property during a scheduled time period.

“Owner-occupant” means a person, at the time that a notice of default and intention to foreclose is served on the mortgagor under the power of sale:

- (1) Who owns an interest in the residential property, and the interest is encumbered by the mortgage being foreclosed; and
- (2) For whom the residential property is and has been the person’s primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served.

“Power of sale” or “power of sale foreclosure” means a nonjudicial foreclosure under this part when the mortgage contains, authorizes, permits, or provides for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure.

“Property” means property (real, personal, or mixed), an interest in property (including fee simple, leasehold, life estate, reversionary interest, and any other estate under applicable law), or other interests that can be subject to the lien of a mortgage.

“Record” or “recorded” means a document is recorded or filed with the office of the assistant registrar of the land court under chapter 501 or recorded with the registrar of conveyances under chapter 502, or both, as applicable.

“Residential property” means real property that is improved and used for residential purposes.

“Served” means to have service of the notice of default and intention to foreclose made in accordance with the service of process or the service of summons under the Hawaii rules of civil procedure, and under sections 634-35 and 634-36.”

SECTION 21. Section 667-22, Hawaii Revised Statutes, is amended to read as follows:

“§667-22 Notice of default[;] and intention to foreclose; contents; distribution. (a) When the mortgagor or the borrower has breached the mortgage agreement, and when the foreclosing mortgagee intends to conduct a power of sale foreclosure under this part, the foreclosing mortgagee shall prepare a written notice of default and intention to foreclose addressed to the mortgagor, the borrower, and any guarantor. The notice of default and intention to foreclose shall state:

- (1) The name and address of the current mortgagee;
- (2) The name and last known address of [~~the mortgagor, the borrower,~~] all mortgagors, borrowers, and any [guarantor;] guarantors;
- (3) The address or a description of the location of the mortgaged property, [~~and~~] the tax map key number, and the certificate of title or transfer certificate of title number if within the jurisdiction of the land court, of the mortgaged property;
- (4) The description of the default[~~, and~~] or, if the default is a monetary default, an itemization of the delinquent amount [shall be given];
- (5) The action [~~that must be taken~~] required to cure the default[;] including the delinquent amount [to cure the default, together with] and the estimated amount of the foreclosing mortgagee’s attorney’s fees and costs, and all other fees and costs related to the default estimated to be incurred by the foreclosing mortgagee [~~related to the default~~] by the deadline date;

- (6) The date by which the default must be cured, which [~~deadline date~~] shall be at least sixty days after the date of the notice of default[;] and intention to foreclose;
 - (7) [~~That~~] A statement that if the default is not cured by the deadline date stated in the notice of default[;] and intention to foreclose, the entire unpaid balance of the moneys owed to the mortgagee under the mortgage agreement will [~~be~~] become due, that the mortgagee intends to conduct a power of sale foreclosure to sell the mortgaged property at a public sale without any court action and without going to court, and that the mortgagee or any other person may acquire the mortgaged property at the public sale; [~~and~~]
 - (8) The name, address, [~~including~~] electronic address, and telephone number of the attorney who is representing the foreclosing mortgagee; provided that the attorney shall be licensed to practice law in the State and physically located in the State[-]; and
 - (9) Notice of the right of the owner-occupant to elect to participate in any other process as established by law.
- (b) The notice of default and intention to foreclose shall also contain wording substantially similar to the following in all capital letters[;] and printed in not less than fourteen-point font:

“IF THE DEFAULT ON THE LOAN CONTINUES AFTER THE DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION AND WITHOUT GOING TO COURT.

YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES. FOR ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY LICENSED IN THIS STATE.

AFTER THE DEADLINE DATE IN THIS NOTICE, TWO PUBLIC SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE LENDER WILL BE HELD, BUT ONLY IF ALL MORTGAGORS (OWNERS) OF THE PROPERTY WHO ALSO CURRENTLY RESIDE AT THE PROPERTY SO AGREE. TO SHOW THAT ALL OWNERS RESIDING AT THE PROPERTY AGREE TO ALLOW TWO OPEN HOUSES BY THE LENDER, [ALL OWNERS] THEY MUST SIGN A LETTER SHOWING THEY AGREE. [ALL OWNERS MUST SEND] THE SIGNED LETTER MUST BE SENT TO THIS OFFICE AT THE ADDRESS GIVEN IN THIS NOTICE.

THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED LETTER BY THE DEADLINE DATE IN THIS NOTICE. THE SIGNED LETTER MUST BE SENT TO THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT REQUESTED.

IF THE SIGNED LETTER IS NOT RECEIVED BY THIS OFFICE BY THE DEADLINE DATE, THE PROPERTY WILL THEN BE SOLD WITHOUT ANY OPEN HOUSES BEING HELD.

EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD WITHOUT ANY OPEN HOUSES BEING HELD.

ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT REQUESTED.”

(c) The notice of default and intention to foreclose shall include a copy of:

- (1) The original mortgage agreement, and copies of any subsequent mortgage agreements and assignments;
- (2) The promissory note signed by the mortgagor and any endorsements and allonges on the note; and
- (3) Any other documents that amend or alter the terms of the original mortgage agreement that were signed by the mortgagor and the mortgagee or any successors or assigns of the mortgagor or the mortgagee.

(d) The notice of default and intention to foreclose shall also include contact information for local approved housing counselors and approved budget and credit counselors.

[(e)] (e) The foreclosing mortgagee shall have the notice of default and intention to foreclose served on:

- (1) The mortgagor and the borrower[;] in the same manner as service of a civil complaint under chapter 634 or the Hawaii rules of civil procedure, as they may be amended from time to time;
- (2) Any prior or junior creditors [having] who have a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
- (3) The state director of taxation;
- (4) The director of finance of the county where the mortgaged property is located; [and]
- (5) The department of commerce and consumer affairs, by filing the notice with the department when required; and
- [(5)] (6) Any other person entitled to receive notice under [section 667-5.5.] this part.

(f) As used in this part, unless the context clearly indicates otherwise, the notice of default and intention to foreclose shall also include any amended notice that results from participation in the mortgage foreclosure dispute resolution program under part .”

SECTION 22. Section 667-23, Hawaii Revised Statutes, is amended to read as follows:

“[H]§667-23 Recordation of notice of default[;] and intention to foreclose. Before the deadline date in the notice of default[;] and intention to foreclose, the notice [of default] shall be recorded in a recordable form [shall be recorded] in a manner similar to recordation of notices of pendency of action under section 501-151 or section 634-51, or both, as applicable. The recorded notice of default and intention to foreclose shall have the same effect as a notice of pendency of action. From and after the recordation of the notice of default[;] and intention to foreclose, any person who becomes a purchaser or encumbrancer of the mort-

gaged property shall be deemed to have constructive notice of the power of sale foreclosure and shall be bound by the foreclosure.”

SECTION 23. Section 667-24, Hawaii Revised Statutes, is amended to read as follows:

“[§667-24]] Cure of default. (a) If the default is cured as required by the notice of default[;] and intention to foreclose, or if the parties have reached a settlement document, the foreclosing mortgagee shall rescind the notice of default[-] and intention to foreclose. Within fourteen days of the date of the cure[-] or a settlement document reached by the parties, the foreclosing mortgagee shall so notify any person who was served with the notice of default[-] and intention to foreclose. If the notice of default and intention to foreclose was recorded, a release of the notice of default and intention to foreclose shall be recorded.

(b) If the default is not cured as required by the notice of default[;] and intention to foreclose, the parties have not reached a settlement document pursuant to part and no report of noncompliance has been issued against the mortgagee under section 667-L, and the mortgagor has not elected to convert the foreclosure to a judicial action, the foreclosing mortgagee, without filing a court action and without going to court, may foreclose the mortgage under power of sale to sell the mortgaged property at a public sale.”

SECTION 24. Section 667-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The public sale of the mortgaged property shall be held only in the county where the mortgaged property is located[-. ~~However, if the borrower, the mortgagor, and the foreclosing mortgagee all agree in writing, the public sale may be held in a different county in the State.;~~ provided that the public sale shall be held only on grounds or at facilities under the administration of the State, as follows:

- (1) At the state capitol, for a public sale of mortgaged property located in the city and county of Honolulu;
- (2) At a state facility in Hilo, for a public sale of mortgaged property located in the eastern portion of the county of Hawaii;
- (3) At a state facility in Kailua-Kona, for a public sale of mortgaged property located in the western portion of the county of Hawaii;
- (4) At a state facility in the county seat of Maui, for a public sale of mortgaged property located in the county of Maui; and
- (5) At a state facility in the county seat of Kauai, for a public sale of mortgaged property located in the county of Kauai;

as designated by the department of accounting and general services; provided further that no public sale shall be held on grounds or at facilities under the administration of the judiciary. The public sale shall be held during business hours on a business day.”

SECTION 25. Section 667-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If the default is not cured as stated in the notice of default[;] and intention to foreclose, the foreclosing mortgagee shall conduct two open houses of the mortgaged property before the public sale; provided that the foreclosing mortgagee timely received the signed letter of agreement from the mortgagor as required by the notice of default[-] and intention to foreclose. Only two open houses shall be required even if the date of the public sale is postponed.”

SECTION 26. Section 667-27, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The foreclosing mortgagee shall prepare the public notice of the public sale. The public notice shall state:

- (1) The date, time, and place of the public sale;
- (2) The dates and times of the two open houses of the mortgaged property, or if there will not [tø] be any open houses, the public notice shall so state;
- (3) The unpaid balance of the moneys owed to the mortgagee under the mortgage agreement;
- (4) A description of the mortgaged property, including the address [~~or description of the location of the mortgaged property,~~] and the tax map key number of the mortgaged property;
- (5) The name of the mortgagor and the borrower;
- (6) The name of the foreclosing mortgagee;
- (7) The name of any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
- (8) The name, the address in the State, and the telephone number in the State of the person in the State conducting the public sale; [~~and~~]
- (9) The terms and conditions of the public sale[-]; and
- (10) An estimate of the opening bid.”

2. By amending subsections (c) and (d) to read:

“(c) If the default is not cured as required by the notice of default[-] and intention to foreclose, the foreclosing mortgagee shall have a copy of the public notice of the public sale of the mortgaged property:

- (1) Mailed or delivered to the mortgagor and the borrower at their respective last known addresses;
- (2) Mailed or delivered to any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
- (3) Mailed or delivered to the state director of taxation;
- (4) Mailed or delivered to the director of finance of the county where the mortgaged property is located;
- (5) Posted on the mortgaged property or on such other real property of which the mortgaged property is a part; and
- (6) Mailed or delivered to any other person entitled to receive notice under section 667-5.5[-] or 667-S.

(d) The foreclosing mortgagee shall have the public notice of the public sale printed in not less than seven-point font and published in the classified section of a daily newspaper [øf] having the largest general circulation specifically in the county where the mortgaged property is located[-]; provided that for property located in a county with a population of more than one hundred thousand but less than three hundred thousand, the public notice shall be published in the newspaper having the largest general circulation specifically in the western or eastern half of the county, as the case may be, in which the property is located. The public notice shall be published once each week for three consecutive weeks [~~(f, constituting three publications)~~]. The public sale shall take place no sooner than fourteen days after the date of the publication of the third public notice advertisement.”

SECTION 27. Section 667-28, Hawaii Revised Statutes, is amended to read as follows:

“**§667-28 Postponement, cancellation of sale.** (a) The public sale may be either postponed or canceled by the foreclosing mortgagee. Notice of the postponement or the cancellation of the public sale shall be:

- (1) ~~Announced]~~ announced by the foreclosing mortgagee at the date, time, and place of the last scheduled public sale; ~~and~~
- (2) ~~Provided, upon request, to any other person who is entitled to receive the notice of default under section 667-22(e)].~~

(b) If there is a postponement of the public sale of the mortgaged property, a new public notice of the public sale shall be published once in the format described in section 667-27. The new public notice shall state that it is a notice of a postponed sale. The public sale shall take place no sooner than fourteen days after the date of the publication of the new public notice. ~~[No sooner]~~ Not less than fourteen days before the date of the public sale, a copy of the new public notice shall be posted on the mortgaged property or on [such other] another real property of which the mortgaged property is a part, and it shall be mailed or delivered to the mortgagor, to the borrower, and to any other person entitled to receive notice under section [667-27.] 667-22(e).

(c) Upon the fourth postponement of every series of four consecutive postponements, the foreclosing mortgagee shall follow all of the public notice of public sale requirements of section 667-27, including the requirements of mailing and posting under section 667-27(c) and of publication under section 667-27(d).

~~[(e)] (d)~~ The default under the mortgage agreement may be cured no later than three business days before the date of the public sale of the mortgaged property by paying the entire amount which would be owed to the foreclosing mortgagee if the payments under the mortgage agreement had not been accelerated, plus the foreclosing mortgagee’s attorney’s fees and costs, and all other fees and costs incurred by the foreclosing mortgagee related to the default, unless otherwise agreed to between the foreclosing mortgagee and the borrower. There is no right to cure the default or any right of redemption after that time. If the default is so cured, the public sale shall be canceled.”

SECTION 28. Section 667-29, Hawaii Revised Statutes, is amended to read as follows:

~~“[§667-29]~~ **Authorized bidder; successful bidder.** Any person, including the foreclosing mortgagee, shall be authorized to bid for the mortgaged property at the public sale and to purchase the mortgaged property. The highest bidder who meets the requirements of the terms and conditions of the public sale shall be the successful bidder. The public sale shall be considered as being held when the mortgaged property is declared by the foreclosing mortgagee as being sold to the successful bidder. When the public sale is held, the successful bidder at the public sale, as the purchaser, shall make a nonrefundable downpayment to the foreclosing mortgagee of not less than ten per cent of the highest successful bid price. If the successful bidder is the foreclosing mortgagee or any other mortgagee having a recorded lien on the mortgaged property before the recording of the notice of default and intention to foreclose under section 667-23, the downpayment requirement may be satisfied by offset and a credit bid up to the amount of the mortgage debt.”

SECTION 29. Section 667-31, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) After the purchaser completes the purchase by paying the full purchase price and the costs for the purchase, the mortgaged property shall be con-

veyed to the purchaser by a conveyance document. The conveyance document shall be in a recordable form and shall be signed by the foreclosing mortgagee in the foreclosing mortgagee's name. The mortgagor or borrower shall not be required to sign the conveyance document [~~on his or her own behalf~~].

(b) From the sale proceeds, after paying all liens and encumbrances in the order of priority as a matter of law, after paying the foreclosing mortgagee's attorney's fees and costs, after paying the fees and costs of the power of sale foreclosure, and after paying the moneys owed to the foreclosing mortgagee, the balance of the sale proceeds shall be distributed by the foreclosing mortgagee to junior creditors having valid liens on the mortgaged property in the order of their priority and not pro rata. Any remaining surplus after payment in full of all valid lien creditors shall be distributed to the mortgagor."

SECTION 30. Section 667-32, Hawaii Revised Statutes, is amended to read as follows:

“[§667-32] Affidavit after public sale; contents. (a) After the public sale is held, the foreclosing mortgagee shall sign an affidavit under penalty of perjury:

- (1) Stating that the power of sale foreclosure was made pursuant to the power of sale provision in the mortgage;
- (2) Stating that the power of sale foreclosure was conducted as required by this part;
- (3) Summarizing what was done by the foreclosing mortgagee;
- (4) Attaching a copy of the recorded notice of default[;] and intention to foreclose;
- (5) Attaching a copy of the last public notice of the public sale[-];
- (6) Referencing the document number of the affiliate statement filed at the bureau of conveyances as required under section 667-AA; and
- (7) Stating the date of filing and any relevant referencing information assigned by the division of financial institutions to the statement filed with the commissioner of financial institutions of the mortgage servicer affiliate statement as required under section 454M-5(a)(4)(F).

(b) The recitals in the affidavit required under subsection (a) may, but need not, be substantially in the following form:

- “(1) I am duly authorized to represent or act on behalf of _____ (name of mortgagee) (“foreclosing mortgagee”) regarding the following power of sale foreclosure. I am signing this affidavit in accordance with the alternate power of sale foreclosure law (Chapter 667, Part II, Hawaii Revised Statutes);
- (2) The foreclosing mortgagee is a “foreclosing mortgagee” as defined in the power of sale foreclosure law;
- (3) The power of sale foreclosure is of a mortgage made by _____ (name of mortgagor) (“mortgagor”), dated _____, and recorded in the _____ (bureau of conveyances or office of the assistant registrar of the land court) as _____ (recording information). The mortgaged property is located at: _____ (address or description of location) and is identified by tax map key number: _____. The legal description of the mortgaged property is attached as Exhibit “A”. The name of the borrower, if different from the mortgagor, is _____ (“borrower”);

- (4) Pursuant to the power of sale provision of the mortgage, the power of sale foreclosure was conducted as required by the power of sale foreclosure law. The following is a summary of what was done:
- (A) A notice of default and intention to foreclose was served on the mortgagor, the borrower, and the following person: _____. The notice of default and intention to foreclose was served on the following date and in the following manner: _____;
 - (B) The date of the notice of default and intention to foreclose was _____ (date). The deadline in the notice for curing the default was _____ (date), which deadline date was at least sixty days after the date of the notice;
 - (C) The notice of default and intention to foreclose was recorded before the deadline date in the _____ (bureau of conveyances or office of the assistant registrar of the land court). The notice was recorded on _____ (date) as document no. _____. A copy of the recorded notice is attached as Exhibit "1";
 - (D) The default was not cured by the deadline date in the notice of default[;] and intention to foreclose;
 - (E) A public notice of the public sale was initially published in the classified section of the _____, a daily newspaper of general circulation in the county where the mortgaged property is located, once each week for three consecutive weeks on the following dates: _____. A copy of the affidavit of publication for the last public notice of the public sale is attached as Exhibit "2". The date of the public sale was _____ (date). The last publication was not less than fourteen days before the date of the public sale;
 - (F) The public notice of the public sale was sent to the mortgagor, to the borrower, to the state director of taxation, to the director of finance of the county where the mortgaged property is located, and to the following: _____. The public notice was sent on the following dates and in the following manner: _____. Those dates were after the deadline date in the notice of default[;] and intention to foreclose, and those dates were at least sixty days before the date of the public sale;
 - (G) The public notice of the public sale was posted on the mortgaged property or on such other real property of which the mortgaged property is a part on _____ (date). That date was at least sixty days before the date of the public sale;
 - (H) Two public showings (open houses) of the mortgaged property were held (or were not held because the mortgagor did not cooperate);
 - (I) A public sale of the mortgaged property was held on a business day during business hours on: _____ (date), at _____ (time), at the following location: _____. The highest successful bidder was _____ (name) with the highest successful bid price of \$_____; and
 - (J) At the time the public sale was held, the default was not cured and there was no circuit court foreclosure action pending in the circuit where the mortgaged property is located; and

(5) This affidavit is signed under penalty of perjury.””

SECTION 31. Section 667-37, Hawaii Revised Statutes, is amended to read as follows:

“[H]§667-37[H] Judicial action of foreclosure before public sale. This part shall not prohibit the borrower, the foreclosing mortgagee, or any other creditor having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-23, from filing an action for the judicial foreclosure of the mortgaged property in the circuit court of the circuit where the mortgaged property is located[; ~~provided that the action is filed before the public sale is held. While that circuit court foreclosure action is pending, the power of sale foreclosure process shall be stayed.~~”

SECTION 32. Section 667-39, Hawaii Revised Statutes, is amended to read as follows:

“[H]§667-39[H] Right to enforce this part. (a) The foreclosing mortgagee, any other creditor having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23, the borrower, and the mortgagor, may enforce this part by bringing an action in the circuit court of the circuit where the mortgaged property is located.

(b) The remedies provided in this part are cumulative and shall not abridge the right of a party to bring an action under any other law, including sections 454M-9 and 480-2.”

SECTION 33. Section 667-41, Hawaii Revised Statutes, is amended to read as follows:

“[H]§667-41[H] Public information requirement. [A] Beginning on September 1, 2011, all financial institutions, mortgagees, lenders, business entities and organizations without limitation, and persons, who intend to use the power of sale foreclosure under this part, under the conditions required by this part, shall also develop informational materials to educate and inform borrowers and mortgagors. These materials shall be made available to the public[;] and provided to the mortgagors of all mortgage agreements entered into, including the borrowers at the time of application for a mortgage or loan, or other contract containing a power of sale foreclosure provision. These materials, among other things, shall inform the borrower that the financial institution and other business entities and persons who are authorized under this part to exercise the power of sale foreclosure, in the event of the borrower’s default, have the option of pursuing either a judicial or nonjudicial foreclosure as provided by law. These informational materials shall fully and completely explain these remedies[-] in simple and understandable terms.”

SECTION 34. Section 667-34, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 667-35, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 667-42, Hawaii Revised Statutes, is repealed.

SECTION 37. On the effective date of this Act, there shall be a phase-in period ending on August 15, 2011, in which any owner-occupant, as defined under section 667-21(b), Hawaii Revised Statutes, who is undergoing a nonjudicial

foreclosure for which the mortgagee's affidavit has not yet been filed pursuant to sections 667-5 or 667-33, Hawaii Revised Statutes, may elect to convert to a judicial foreclosure under section 5 of this Act. An owner-occupant who elects to convert a nonjudicial foreclosure to a judicial foreclosure during the phase-in period:

- (1) Shall submit with the petition and filing fee as required under sections 667-U and 667-V, Hawaii Revised Statutes, copies of any foreclosure notices received from the mortgagee and published notices of the public sale made pursuant to section 667-5 or 667-27, Hawaii Revised Statutes;
- (2) Shall not be subject to the deadline described in section 667-U(a)(2), Hawaii Revised Statutes; and
- (3) Shall submit a filing fee of \$300, in lieu of the \$525 filing fee required under section 667-U(a)(6), Hawaii Revised Statutes;

provided further that the requirements of section 667-W, Hawaii Revised Statutes, shall not be applicable to the foreclosing mortgagee.

SECTION 38. There is appropriated out of the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes, the sum of \$400,000, or so much thereof as may be necessary for fiscal year 2011-2012, to be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes, as seed capital; provided that upon receipt of sufficient moneys to accomplish its purpose, the mortgage foreclosure dispute resolution special fund shall reimburse the compliance resolution fund for the appropriation made pursuant to this Act.

SECTION 39. There is appropriated out of the mortgage foreclosure dispute resolution special fund, established under section 667-P, Hawaii Revised Statutes, the sum of \$1,850,000, or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 for all expenses of the mortgage foreclosure dispute resolution program, including the hiring of one full-time program specialist exempt from chapter 76, Hawaii Revised Statutes, and one full-time office assistant exempt from chapter 76, Hawaii Revised Statutes, in the division of administrative hearings, department of commerce and consumer affairs, to carry out the purposes of this Act, and for the reimbursement of the compliance resolution fund of the amount appropriated as seed capital to the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 40. There shall be a moratorium on all new nonjudicial foreclosure actions under part I of chapter 667, Hawaii Revised Statutes, for property located in this State to begin on the effective date of this Act and to end on July 1, 2012. No foreclosure by power of sale pursuant to section 667-5, Hawaii Revised Statutes, shall be initiated and the registrar of the bureau of conveyances shall not record an affidavit or notice of sale pursuant to section 667-5, Hawaii Revised Statutes, for a power of sale foreclosure under section 667-5, Hawaii Revised Statutes, initiated during the moratorium period established by this Act.

SECTION 41. The department of commerce and consumer affairs shall submit a report to the legislature no later than twenty days before the conven-

ing of the regular sessions of 2012 and 2013 on the operations and outcomes of the mortgage foreclosure dispute resolution program established by section 1 of this Act, including recommendations for further legislation if necessary for the efficient operation of the program.

SECTION 42. In codifying the new sections added by sections 1, 3, 4, 5, and 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 43. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 44. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 45. This Act shall take effect upon its approval; provided that:

- (1) The mortgage foreclosure dispute resolution program established by section 1 of this Act shall be operative no later than October 1, 2011;
- (2) Sections 1, 13, and 14 shall be repealed on September 30, 2014, and sections 514A-90(h) and 514B-146(h), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act;
- (3) Section 10 shall take effect on July 1, 2012;
- (4) Section 5 shall be repealed on December 31, 2012;
- (5) Section 7 shall be repealed on September 30, 2014, and section 26-9(o), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (6) Upon the repeal of section 1, all moneys remaining in the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes, shall be transferred to the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes.

(Approved May 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 49

H.B. NO. 1552

A Bill for an Act Relating to Coffee.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that some producers of coffee blends that include one or more Hawaii-grown coffees use a secondary label on their packaging that contains the geographic origin of the Hawaii-grown coffee. This

secondary label is misleading and implies that the coffee in the package was grown exclusively in the named geographic region.

For example, a package might have a secondary label that states “Kona Vanilla Macadamia Nut”, when in fact the identity label required by state law clearly states that the coffee is merely a ten per cent Kona coffee blend.

The purpose of this Act is to restrict the use of a geographic origin on Hawaii-grown coffee labels to improve the consumer’s understanding as to the contents of the package.

SECTION 2. Section 486-120.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) It shall be a violation of this section~~[-]~~ to:

- (1) ~~[To use]~~ Use the identity statement specified in subsection (a)(1)(A) or similar terms in labeling or advertising unless the package of roasted or instant coffee contains one hundred per cent coffee from that one geographic origin;
- (2) ~~[To use]~~ Use a geographic origin in labeling or advertising, including in conjunction with a coffee style or in any other manner, if the roasted or instant coffee contains less than ten per cent coffee by weight from that geographic origin;
- (3) ~~[To use]~~ Use a geographic origin in advertising roasted or instant coffee, including advertising in conjunction with a coffee style or in any other manner, without disclosing the percentage of coffee used from that geographic origin as described in subsection (a)(1)(B) and ~~[(a)](2)~~;
- (4) ~~[To use]~~ Use a geographic origin in labeling or advertising roasted or instant coffee, including in conjunction with a coffee style or in any other manner, if the green coffee beans used in that roasted or instant coffee do not meet the grade standard requirements of rules adopted under chapter 147;
- (5) ~~[To misrepresent,]~~ Misrepresent, on a label or in advertising of a roasted or instant coffee, the per cent coffee by weight of any coffee from a geographic origin or regional origin; ~~[or]~~
- (6) ~~[To use]~~ Use the term “All Hawaiian” on a label or in advertising of a roasted or instant coffee if the roasted or instant coffee is not produced entirely from green coffee beans produced in geographic origins defined in this chapter~~[-]~~;
- (7) Use a geographic origin on the front label panel of a package of roasted or instant coffee other than in the trademark or in the identity statement as authorized in subsection (a)(1) and (2) unless one hundred per cent of the roasted or instant coffee contained in the package is from that geographic origin;
- (8) Use more than one trademark on a package of roasted or instant coffee unless one hundred per cent of the roasted or instant coffee contained in the package is from that geographic origin specified by the trademark;
- (9) Use a trademark that begins with the name of a geographic origin on a package of roasted or instant coffee unless one hundred per cent of the roasted or instant coffee contained in the package comes from that geographic origin or the trademark ends with words that indicate a business entity; or
- (10) Print the identity statement required by subsection (a) in a smaller font than that used for a trademark that includes the name of a geographic origin pursuant to paragraph (7) and in a location

other than the front label panel of a package of roasted or instant coffee.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 of this Act shall take effect on July 1, 2012.

(Became law on May 5, 2011, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 50

S.B. NO. 1386

A Bill for an Act Relating to the Board of Regents of the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304A-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) At ~~[its first meeting after June 30,]~~ a meeting preceding July 1 of each year, the board of regents shall elect a chairperson and ~~[vice chairperson, who shall serve until adjournment of its first meeting after]~~ up to two vice-chairpersons whose terms shall be from July 1 to June 30 of the next year or thereafter until their successors are [appointed:] elected. The board shall appoint a secretary, who shall not be a member of the board. The president of the university shall act as executive officer of the board. ~~[From May 1, 2007 and until such time that the board of regents has at least fourteen members, seven members of the board of regents shall constitute a quorum to conduct business, and the concurrence of at least seven members of the board of regents shall be necessary to make any action of the board of regents valid; provided that upon filling at least fourteen of the fifteen board of regents seats required under subsection (a), a]~~ A majority of the board of regents shall constitute a quorum to conduct business, and the concurrence of a majority of all the members to which the board of regents is entitled shall be necessary to make any action of the board of regents valid. The board shall meet at least ten times annually and, from time to time, may meet in each of the counties of Hawaii, Maui, and Kauai.”

SECTION 2. Section 304A-104.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) Except as provided in subsection (c), ~~[within sixty days of convening its first meeting, the regents candidate advisory council shall present no fewer than two and no more than four qualified candidates to the governor for each vacant seat on the board of regents that has arisen due to resignation, death, or removal by the governor; provided that for all subsequent presentations to the governor,]~~ the regents candidate advisory council shall present no fewer than two and no more than four qualified candidates for each seat on the board of regents to the governor within:

- (1) Sixty days of a vacancy that arises by resignation, death, or removal by the governor; or
- (2) One hundred twenty days prior to the expiration of a term.

The regents candidate advisory council shall be deemed to have fulfilled its obligation under this section upon presentation of the names of the minimum num-

ber of candidates required to be presented for each seat or seats on the board of regents.”

2. By amending subsections (f) and (g) to read:

“(f) The regents candidate advisory council shall consist of seven members to be appointed without regard to section 26-34 as follows:

- (1) One member shall be appointed by the president of the senate;
- (2) One member shall be appointed by the speaker of the house of representatives;
- (3) One member shall be appointed by the governor;
- (4) One member shall be appointed by one of the co-chairs of the All Campus Council of Faculty Senate Chairs of the University of Hawaii; ~~provided that beginning on July 1, 2010, a~~. A person may not be appointed as a member of the regents candidate advisory council under this paragraph, if within the five years immediately preceding that appointment, the person served on the All Campus Council of Faculty Senate Chairs of the University of Hawaii;
- (5) One member shall be appointed by the chairperson of the Executive Council of the University of Hawaii Student Caucus; ~~provided that beginning on July 1, 2010, a~~. A person may not be appointed as a member of the regents candidate advisory council under this paragraph, if within one year immediately preceding that appointment, the person served on the Executive Council of the University of Hawaii Student Caucus;
- (6) One member shall be appointed by the chairperson of the Association of Emeritus Regents; and
- (7) One member shall be appointed by the president of the University of Hawaii Alumni Association;

provided that members appointed under paragraphs (4) to (7) shall be selected from the general public and may include members of the constituencies represented; provided further that each appointee satisfies the requirements for appointment provided in this subsection.

The regents candidate advisory council shall be selected in a wholly non-partisan manner. ~~[If any member has not been appointed within one hundred eighty days of May 1, 2007, the sitting members on the regents candidate advisory council shall make an interim appointment to fill the vacant seat. The interim appointee shall satisfy the requirements for appointment provided in this subsection and shall serve until the time when the appropriate appointing authority makes an appointment for the vacant seat as provided in this subsection.]~~ Appointees to the regents candidate advisory council shall have a general understanding of the purposes of higher education, the mission of the University of Hawaii system, and the responsibilities of the board of regents. Appointees shall be individuals who are widely viewed as having placed the broad public interest ahead of special interests, having achieved a high level of prominence in their respective professions, and being respected members of the community.

(g) Members of the regents candidate advisory council shall serve four-year terms; ~~provided that the three members initially appointed by the governor, the president of the senate, and the speaker of the house of representatives shall serve for terms of two years; provided further that terms for appointments of the initial members of the regents candidate advisory council shall be deemed to begin on July 1, 2007, regardless of the actual date of appointment].”~~

3. By amending subsection (j) to read:

“(j) ~~[The regents candidate advisory council shall convene its first meeting on or after thirty one days from May 1, 2007; provided that, if thirty days after May 1, 2007, all the members to which the regents candidate advisory~~

~~council is entitled have not yet been appointed, the regents candidate advisory council shall convene its first meeting upon the appointment of a majority of its members.]~~ The members of the regents candidate advisory council shall choose a chairperson from among themselves. A majority of all the members to which the regents candidate advisory council is entitled shall constitute a quorum to conduct business. The concurrence of a majority of all the members to which the regents candidate advisory council is entitled shall be necessary to make any action of the regents candidate advisory council valid. The regents candidate advisory council shall meet annually and at other times as necessary. The regents candidate advisory council shall be exempt from part I of chapter 92.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 6, 2011.)

ACT 51

S.B. NO. 1291

A Bill for an Act Relating to Child Protective Act Court Proceedings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. During the 2010 regular session, the legislature passed S.B. No. 2716, C.D. 1, which was enacted as Act 135, Session Laws of Hawaii 2010, and codified as the Child Protective Act, chapter 587A, Hawaii Revised Statutes. Act 135 was a comprehensive update of the former Child Protective Act, chapter 587, Hawaii Revised Statutes, which was repealed by Act 135. The provisions of Act 135 ensure the State’s compliance with federal Title IV-E requirements so that Hawaii remains eligible for approximately \$40,000,000 in annual federal funding. Subsequent to the enactment of chapter 587A, it has become necessary to clarify wording in the statute to further ensure consistency in practice and compliance with federal requirements.

SECTION 2. Section 587A-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§587A-5]]~~ **Jurisdiction.** Pursuant to section 571-11(9), the court shall have exclusive original jurisdiction ~~[in a child protective proceeding concerning]:~~

- (1) In a child protective proceeding concerning any child who is or was found within the State at the time specified facts and circumstances occurred, are discovered, or are reported to the department. These facts and circumstances constitute the basis for the court’s finding that the child’s physical or psychological health or welfare is subject to imminent harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child’s family[-]; and
- (2) In any prior child protective proceeding under chapter 587, the former Child Protective Act.”

SECTION 3. Section 587A-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The service plan shall provide:

- (1) The specific steps necessary to facilitate the return of the child to a safe family home, if the proposed placement of the child is in foster care under foster custody. These specific steps shall include treatment and services that will be provided, actions completed, specific measurable and behavioral changes that must be achieved, and responsibilities assumed;
- (2) Whether an ohana conference will be conducted for [faet] family finding and family group decision making;
- (3) The respective responsibilities of the child, the parents, legal guardian or custodian, the department, other family members, and treatment providers, and a description and expected outcomes of the services required to achieve the permanency goal;
- (4) The required frequency and types of contact between the assigned social worker, the child, and the family;
- (5) The time frames during which services will be provided, actions must be completed, and responsibilities must be discharged;
- (6) Notice to the parents that their failure to substantially achieve the objectives described in the service plan within the time frames established may result in termination of their parental rights;
- (7) Notice to the parents that if the child has been in foster care under the responsibility of the department for an aggregate of fifteen out of the most recent twenty-two months from the child's date of entry into foster care, the department is required to file a motion to set a termination of parental rights hearing, and the parents' failure to provide a safe family home within two years from the date when the child was first placed under foster custody by the court, may result in the parents' parental rights being terminated; and
- (8) Any other terms and conditions that the court or the authorized agency deem necessary to the success of the service plan."

SECTION 4. Section 587A-28, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) If the court finds that the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family, the court:

- (1) Shall enter a finding that the court has jurisdiction pursuant to section 587A-5;
- (2) Shall enter a finding regarding whether, before the child was placed in foster care, the department made reasonable efforts to prevent or eliminate the need to remove the child from the child's family home;
- (3) Shall enter orders:
 - (A) That the child be placed in foster custody if the court finds that the child's remaining in the family home is contrary to the welfare of the child and the child's parents are not willing and able to provide a safe family home for the child, even with the assistance of a service plan; or
 - (B) That the child be placed in family supervision if the court finds that the child's parents are willing and able to provide the child with a safe family home with the assistance of a service plan;
- (4) Shall determine whether aggravated circumstances are present.
 - (A) If aggravated circumstances are present, the court shall:
 - (i) Conduct a permanency hearing within thirty days, and the department shall not be required to provide the child's

- parents with an interim service plan or interim visitation; and
- (ii) Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to ~~[set the case for a termination of parental rights hearing.]~~ terminate parental rights unless the department has documented in the safe family home factors or other written report submitted to the court a compelling reason why it is not in the best interest of the child to file a motion.
- (B) If aggravated circumstances are not present~~[,]~~ or there is a compelling reason why it is not in the best interest of the child to file a motion to terminate parental rights, the court shall order that the department make reasonable efforts to reunify the child with the child's parents and order an appropriate service plan;
- (5) Shall order reasonable supervised or unsupervised visits for the child and the child's family, including with the child's siblings, unless such visits are determined to be unsafe or detrimental to, and not in the best interests of, the child;
- (6) Shall order each of the child's birth parents to complete the medical information forms and release the medical information required under section 578-14.5, to the department. If the child's birth parents refuse to complete the forms or to release the information, the court may order the release of the information over the parents' objections;
- (7) Shall determine whether each party understands that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination;
- (8) Shall determine the child's date of entry into foster care as defined in this chapter;
- (9) Shall set a periodic review hearing to be conducted no later than six months after the date of entry into foster care and a permanency hearing to be held no later than twelve months after the date of entry into foster care;
- (10) Shall set a status conference, as the court deems appropriate, to be conducted no later than ninety days after the return hearing; and
- (11) May order that:
- (A) Any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and that are determined to be in the child's best interests;
- (B) The child be examined by a physician, surgeon, psychiatrist, or psychologist; and
- (C) The child receive treatment, including hospitalization or placement in other suitable facilities, as is determined to be in the child's best interests."

SECTION 5. Section 587A-30, Hawaii Revised Statutes, is amended to read as follows:

“[§587A-30] Periodic review hearing. (a) The court shall set a periodic review hearing to be conducted no later than six months after a child’s date of entry into foster care. Thereafter, the court shall conduct periodic review hearings at intervals of no longer than six months until the court’s jurisdiction is terminated[.] unless the child is in the permanent custody of the department or an authorized agency. If the child is in the permanent custody of the department or an authorized agency, the court shall conduct a permanency hearing at intervals of no longer than six months until the court’s jurisdiction is terminated. The court may set a case for a periodic review hearing upon the motion of a party at any time, if the court deems the hearing to be in the best interests of the child.

(b) At each periodic review hearing, the court shall review the status of the case to determine whether the child is receiving appropriate services and care, whether the case plan is being properly implemented, and whether the department’s or authorized agency’s activities are directed toward a permanent placement for the child. At the hearing, the court shall:

- (1) Determine whether the child is safe[;] and enter orders:
 - (A) That the child be placed in foster custody if the court finds that the child’s remaining in the family home is contrary to the welfare of the child and the child’s parents are not willing and able to provide a safe family home for the child, even with the assistance of a service plan;
 - (B) That the child be placed in family supervision if the court finds that the child’s parents are willing and able to provide the child with a safe family home with the assistance of a service plan;
or
 - (C) To terminate jurisdiction if the court finds that the child’s parents are willing and able to provide the child with a safe family home without the assistance of a service plan;
- (2) Determine the continued need for and appropriateness of the out-of-home placement;
- (3) Determine the extent to which each party has complied with the case plan and the family’s progress in making their home safe for the child;
- (4) Determine the family’s progress in resolving the problems that caused the child harm or to be threatened with harm and, if applicable, the necessity for continued out-of-home placement of the child;
- (5) Project a likely date for:
 - (A) The child’s return to a safe family home; or
 - (B) The child’s permanent placement out of the family home in the following order of preference:
 - (i) Adoption;
 - (ii) Legal guardianship; or
 - (iii) Other permanent out-of-home placement;
- (6) Evaluate visitation arrangements; and
- (7) Issue such further or other appropriate orders as it deems to be in the best interests of the child.

(c) If the child has been in foster care under the responsibility of the department for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to ~~[set the matter for a termination of parental rights hearing;]~~ terminate parental rights, unless:

- (1) The department has documented in the safe family home factors or other written report submitted to the court a compelling reason why it is not in the best interest of the child to file a motion; or
 - (2) The department has not provided to the family of the child, consistent with the time period required in the service plan, such services as the department deems necessary for the safe return of the child to the family home.
- (d) Nothing in this section shall prevent the department from filing a motion to ~~set a termination of parental rights hearing~~ terminate parental rights if the department determines that the criteria for terminating parental rights are present.”

SECTION 6. Section 587A-31, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§587A-31]]~~ **Permanency hearing.** (a) A permanency hearing shall be conducted within twelve months of the child’s date of entry into foster care or within thirty days of a judicial determination that the child is an abandoned infant or that aggravated circumstances are present. A permanency hearing shall be conducted at least every twelve months thereafter for as long as the child remains in foster care under the placement responsibility of the department[-] or an authorized agency, or every six months thereafter if the child remains in the permanent custody of the department or an authorized agency.

(b) The court shall review the status of the case to determine whether the child is receiving appropriate services and care, that case plans are being properly implemented, and that activities are directed toward a permanent placement for the child.

(c) At each permanency hearing, the court shall make written findings pertaining to:

- (1) The extent to which each party has complied with the service plan and progressed in making the home safe;
- (2) Whether the current placement of the child continues to be appropriate and in the best interests of the child or if another in-state or out-of-state placement should be considered;
- (3) The court’s projected timetable for reunification or, if the current placement is not expected to be permanent, placement in an adoptive home, with a legal guardian, or under the permanent custody of the department[;] or an authorized agency;
- (4) Whether the department has made reasonable efforts, in accordance with the safety and well-being of the child, to:
 - (A) Place siblings who have been removed from the family home with the same resource family, adoptive placement, or legal guardians; and
 - (B) Provide for frequent visitation or other on-going interactions with siblings who are not living in the same household;
- (5) The appropriate permanency goal for the child, including whether a change in goal is necessary;
- (6) Whether the department has made reasonable efforts to finalize the permanency goal in effect for the child and a summary of those efforts;
- (7) The date by which the permanency goal for the child is to be achieved;

- (8) In the case of a child who has attained sixteen years of age, the services needed to assist the child with the transition from foster care to independent living; and
- (9) Consultations with the child in an age-appropriate manner about the proposed plan for permanency or transition from foster care to independent living.
- (d) At each permanency hearing, the court shall order:
 - (1) The child's reunification with a parent or parents;
 - (2) The child's continued placement in foster care, where:
 - (A) Reunification is expected to occur within a time frame that is consistent with the developmental needs of the child; and
 - (B) The safety and health of the child can be adequately safeguarded; or
 - (3) A permanent plan with a goal of:
 - (A) Placing the child for adoption and when the department will file a motion to set the matter for the termination ~~[[of]]~~ parental rights;
 - (B) Placing the child for legal guardianship if the department documents and presents to the court a compelling reason why termination of parental rights and adoption are not in the best interests of the child; or
 - (C) Awarding permanent custody to the department or an authorized agency, if the department documents and presents to the court a compelling reason why adoption and legal guardianship are not in the best interests of the child.

(e) At each permanency hearing where a permanent plan is ordered, the court shall make appropriate orders to ensure timely implementation of the permanent plan and to ensure that the plan is accomplished within a specified period of time.

(f) A permanency hearing may be held concurrently with a periodic review hearing.

(g) If the child has been in foster care under the responsibility of the department for a total of twelve consecutive months or an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to ~~[set the matter for a termination of parental rights hearing]~~ terminate parental rights, unless:

- (1) The department has documented in the safe family home factors or other written report submitted to the court~~;~~ a compelling reason why it is not in the best interest of the child to file a motion; or
- (2) The department has not provided to the family of the child, consistent with the time period required in the service plan, such services as the department deems necessary for the safe return of the child to the family home.

(h) Nothing in this section shall prevent the department from filing a motion to ~~[set a termination of parental rights hearing]~~ terminate parental rights if the department determines that the criteria for terminating parental rights are present."

SECTION 7. Section 587A-33, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) Absent compelling reasons, if the child has been in foster care under the department's responsibility for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall

file a motion to ~~[set the matter for a termination of parental rights hearing.]~~
terminate parental rights.”

SECTION 8. Section 587A-34, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) At a preliminary hearing on the motion, the court shall continue the prior award of permanent custody and may order a trial home placement and a temporary reinstatement of parental rights upon finding that:

- (1) There has been a material change in circumstances;
- (2) A parent is willing to provide care for the child;
- (3) A parent is able to provide a safe family home or the home can be made safe with the assistance of services; and
- (4) A trial home placement is in the child’s best interests.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on October 1, 2011.

(Approved May 18, 2011.)

ACT 52

H.B. NO. 945

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-251, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-251]]~~ **School year; instructional time.** (a) Notwithstanding any other law to the contrary, ~~[for]~~ beginning with the 2011-2013 school years, all public schools, [except] excluding charter schools[-] and multi-track public schools, shall implement a school year of one hundred eighty days, excluding professional development days and other non-instructional days negotiated pursuant to chapter 89~~[-]~~ that shall include:

- (1) ~~Nine hundred fifteen student instructional hours for the elementary school grades; and~~
- (2) ~~Nine hundred ninety student instructional hours for the secondary school grades].~~

(b) Notwithstanding any other law to the contrary:

- (1) For the 2011-2012 school year, fifty per cent of all public elementary schools in the State, excluding charter schools and multi-track public schools, shall implement a school year that includes nine hundred fifteen student instructional hours; and
- (2) Beginning with the 2012-2013 school year, all public elementary schools in the State, excluding charter schools and multi-track public schools, shall implement a school year that includes nine hundred fifteen student instructional hours.

(c) Notwithstanding any other law to the contrary, for the 2014-2016 school years, all public secondary schools, excluding charter schools and multi-track public schools, shall implement a school year that includes nine hundred ninety student instructional hours.

~~[(b)]~~ (d) Notwithstanding any other law to the contrary, for the ~~[2013-2015]~~ 2016-2018 school years, all public schools, ~~[except]~~ excluding charter schools~~;~~ and multi-track public schools, shall implement a school year of one hundred eighty days, excluding professional development days and other non-instructional days negotiated pursuant to chapter 89, that shall include one thousand eighty student instructional hours for both elementary and secondary school grades.

(e) The board, in its discretion, may grant a waiver to any individual school subject to the student instructional hours or one hundred eighty day school year requirements in this section. The board shall adopt policies and procedures to grant a waiver under this subsection.

~~[(e)]~~ (f) For purposes of this section, "student instructional hours" means student learning time during which students are engaged in learning activities including regularly-scheduled instruction and learning assessments within the curriculum, and does not include lunch, recess, or passing time.

(g) The department of education, with the board of education and office of the governor, and in consultation with representatives of the affected collective bargaining units, shall submit to the legislature no later than twenty days prior to the convening of the regular sessions of 2013, 2014, 2015, 2016, 2017, and 2018, a report on its progress and efforts to meet the requirements of subsections (a), (b), (c), and (d)."

SECTION 2. Act 167, Session Laws of Hawaii 2010, is amended by amending section 4 to read as follows:

"SECTION 4. The department of education shall, with the board of education and office of the governor, and in consultation with representatives of the affected collective bargaining units, submit to the legislature, no later than twenty days prior to the convening of the regular session of ~~[2012,]~~ 2015, a plan to implement beginning with the 2018-2019 school year, for elementary and secondary school grades at all public schools, excluding charter schools and multi-track public schools, a school year of one hundred ninety days, excluding professional development days and other non-instructional days negotiated pursuant to chapter 89, Hawaii Revised Statutes, that shall include one thousand one hundred forty student instructional hours ~~[for both elementary and secondary school grades at all public schools, except charter schools, for school years beginning with the 2015-2016 school year].~~

For purposes of this section, "student instructional hours" shall have the same meaning as in section ~~[302A—,]~~ 302A-251, Hawaii Revised Statutes."

SECTION 3. The department of education shall:

- (1) Re-examine what constitutes student instructional hours, determine current levels of student instructional hours at each school, and assess the ability of all schools to comply with the requirements of section 302A-251(a),(b), and (c), Hawaii Revised Statutes; and
- (2) Report its findings under paragraph (1) to the legislature no later than September 1, 2011.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 18, 2011.)

ACT 53

H.B. NO. 1069

A Bill for an Act Relating to Effect of Finding of Unfitness to Proceed.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend the law governing the time frames for fitness restoration for persons charged with non-violent petty misdemeanors and for persons charged with non-violent misdemeanors. Among the states and the District of Columbia, Hawaii is one of only ten jurisdictions that do not specify a maximum number of days for fitness restoration. Forty-one jurisdictions mandate either a fixed time frame for fitness restoration (on average, ninety days for misdemeanor charges), a time frame equivalent to the maximum term of the sentence associated with the charge, or a combination of the two (a fixed time period or the time equivalent to the maximum sentence, whichever is less). These forty-one jurisdictions have seen dramatic decreases in the number of pretrial defendants hospitalized for fitness restoration who would otherwise not meet commitment criteria for hospital level of mental health care.

SECTION 2. Section 704-406, Hawaii Revised Statutes, is amended to read as follows:

“§704-406 Effect of finding of unfitness to proceed. (1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment[-]; provided that the commitment shall be limited in certain cases as follows:

- (a) When the defendant is charged with a petty misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than sixty days from the date the court determines the defendant lacks fitness to proceed; and
- (b) When the defendant is charged with a misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than one hundred twenty days from the date the court determines the defendant lacks fitness to proceed.

If the court is satisfied that the defendant may be released on condition without danger to the defendant or to the person or property of others, the court shall order the defendant's release, which shall continue at the discretion of the court,¹ on conditions the court determines necessary[-]; provided that the release on conditions of a defendant charged with a petty misdemeanor not involving violence or attempted violence shall continue for no longer than sixty days, and the release on conditions of a defendant charged with a misdemeanor not involving violence or attempted violence shall continue for no longer than one hundred twenty days. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions. When the defendant is committed to the custody of the director of health for detention, care, and treatment, the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant ~~[which]~~ that have been adjudicated by the acceptance of a plea of guilty or ~~[no contest,]~~ nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or ~~[no contest]~~ nolo contendere made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate

function of the county police departments~~], with the exception of~~; provided that expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center~~[-]~~ shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation ~~[e]f~~ or who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.

(2) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and:

- (a) Order the defendant to be discharged;
- (b) Subject to the law governing the involuntary civil commitment of persons affected by physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or
- (c) Subject to the law governing involuntary outpatient treatment, order the defendant to be released on conditions the court determines necessary.

(3) If a defendant committed to the custody of the director of health for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the commitment, the charge for which the defendant was committed for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be released from custody unless the defendant is subject to prosecution for other charges, in which case, unless the defendant is subject to the law governing involuntary civil commitment, the court shall order the defendant's commitment to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other commitment under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report. If, following a report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

- (a) Release the defendant; or
- (b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.

(4) If a defendant released on conditions for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the release on conditions order, the charge for which the defendant was released on conditions for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be discharged from the release on conditions unless the defendant is subject to prosecution for other charges or subject to the law governing involuntary civil commitment, in which case the court shall order the defendant's commitment to the custody of the director of health to be placed in an appro-

priate institution for detention, care, and treatment. Within a reasonable time following any other release on conditions under subsection (1), the court shall appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

- (a) Release the defendant; or
- (b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved May 19, 2011.)

Note

1. Comma should be underscored.

ACT 54

S.B. NO. 2

A Bill for an Act Relating to the Public Land.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the department of land and natural resources has already collected a substantial amount of information about lands that are in the public land trust. The focus of this measure is the further study or review of the trust status of those lands to which state agencies hold title and the disposition of those lands, to verify the accuracy of or make amendments to their trust status as indicated in the department’s existing database of public land trust lands.

The purpose of this Act is to facilitate the establishment of a comprehensive information system to inventory and maintain information about the lands of the public land trust described in section 5(f) of the Admission Act and article XII, section 4 of the Hawaii State Constitution.

SECTION 2. (a) For purposes of this Act:

“Ceded lands” means those lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved on July 7, 1898.

“Department” means the department of land and natural resources unless the context clearly indicates otherwise.

“Public land trust” means that public land trust established in section 5(f) of the Admission Act.

(b) The department shall initiate and coordinate all efforts to establish a public land trust information system. The information system shall consist of a complete and accurate inventory of all lands in the public land trust to which state agencies hold title or over which they maintain management control.

(c) Beginning July 1, 2011, the department shall identify all of the lands that are to be included in the public land trust inventory. After interviewing representatives of each of the four counties of the city and county of Honolulu, Kauai, Maui, and Hawaii, and conducting discussions with the office of Hawaiian affairs, the department of Hawaiian home lands, the department of transportation, the attorney general, the director of finance, and other state agencies holding title to public land trust lands or to which lands of the public land trust have been set aside, the department shall also determine what other information would be useful to include in the inventory.

At minimum, the department of land and natural resources shall determine whether the following information relating to each parcel of land in the operating inventory would be useful:

- (1) The parcel's location by metes and bounds, tax map key number, or both;
- (2) The parcel's size rounded to the nearest acre;
- (3) The date the parcel was acquired;
- (4) If conveyed out of the public land trust, the date the parcel was conveyed;
- (5) Whether the parcel was acquired by the State pursuant to section 5(b) or 5(e) of the Admission Act or Public Law 88-233, or in exchange for a parcel of land acquired by the State pursuant to those laws;
- (6) Whether the parcel is a subdivided portion of a larger parcel acquired by the State pursuant to section 5(b) or 5(e) of the Admission Act or Public Law 88-233, or in exchange for a parcel of land acquired by the State pursuant to those laws;
- (7) Whether the parcel or any portion of the parcel is ceded land, and the extent to which the parcel consists of ceded land;
- (8) The name of the state or county agency holding title to the parcel;
- (9) Whether the parcel has been set aside and the name of the state or county agency to which the parcel has been set aside;
- (10) The parcel's current state land use, state land classifications pursuant to section 171-10, Hawaii Revised Statutes, and county zoning designations;
- (11) A description of all natural resources, including minerals and water, found on or appurtenant to the parcel;
- (12) A description of every easement, covenant, regulatory condition, or other benefit or servitude to which the parcel is entitled or subject; and
- (13) A description of all leases, uses, or other disposition to which the parcel has been put.

(d) The department shall also conduct an investigation into the most appropriate means of establishing and maintaining the public land trust information system, including:

- (1) The type of hardware and software appropriate for storing and maintaining the information system;
- (2) Whether the information system should be established as a geographic information system;
- (3) The tasks needing to be performed to complete and establish the information system;
- (4) The sequence in which the tasks needing to be performed should be completed;
- (5) Whether and to what extent state and county agencies holding title to public land trust lands or to which public land trust lands have

been set aside should continue maintaining separate inventories of the public land trust lands;

- (6) Whether a single agency should be responsible for maintaining the public land trust information system;
- (7) To which agency the responsibility should be delegated if a single agency concept is chosen; and
- (8) The extent to which other agencies should be required to cooperate and assist in that effort.

(e) The department shall identify existing sources of data, information, and resources that can be incorporated into or used to establish the public land trust inventory and public land trust information system, including existing inventories of the ceded lands and the public land trust lands established or maintained by the federal government, the office of Hawaiian affairs, the department of Hawaiian home lands, the University of Hawaii, the department of transportation, the Hawaii housing finance and development corporation, other state agencies, the counties, or private entities.

(f) The department shall:

- (1) Estimate the total cost of establishing the public land trust information system;
- (2) Identify possible sources of funding to defray that cost; and
- (3) Identify the factors to be considered in prioritizing the expenditures to be made in each fiscal year,

if an incremental or phased implementation process is used to complete the system.

(g) All state and county agencies shall assist the department in facilitating the establishment of the public land trust information system and shall comply with any and all requests the department of land and natural resources may make for any information and services pertinent to the completion of the information system.

(h) All state agencies shall report to the department of land and natural resources:

- (1) By August 1, 2011, each parcel of land, or part of a parcel of land, to which the reporting agency holds title or that has been set aside to the reporting agency, regardless of whether the land is within the public land trust, is ceded land, or both;
- (2) By August 1, 2011, on the disposition or transfer of any parcel of land, or part of a parcel of land, to which the agency holds title, and provide documents pertinent to that disposition or transfer; and
- (3) By January 1, 2012, any inaccuracy discovered in the information provided to the department pursuant to paragraph (1) or (2) and include:
 - (A) A description of how the inaccuracy will be corrected; and
 - (B) Copies of all documents related to the correction of those inaccuracies.

SECTION 3. (a) The department of land and natural resources shall submit a progress report to the legislature no later than twenty days prior to the convening of the regular sessions of 2012 and 2013. The progress report shall:

- (1) Indicate what is necessary to complete the public land trust inventory and the public land trust information system; and
- (2) Include any proposed legislation that the department deems necessary to facilitate the expeditious completion and support of the inventory and information system.

ACT 55

(b) The inventory and information system shall be completed and operational by December 31, 2013, unless the department advises the legislature otherwise in a progress report.

SECTION 4. There is appropriated out of the land conservation fund, established by section 173A-5, Hawaii Revised Statutes, the sum of \$275,000 or so much thereof as may be necessary for fiscal year 2011-2012 and \$85,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the establishment and maintenance of a computerized, comprehensive statewide public land trust inventory database and funding for one staff position for a database and application developer.

The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved May 20, 2011.)

ACT 55

S.B. NO. 1555

A Bill for an Act Relating to the Department of Land and Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER PUBLIC LAND DEVELOPMENT CORPORATION

§ -1 **Findings and purpose.** The legislature finds that certain public lands under the jurisdiction of the department of land and natural resources are not used effectively. Public lands in certain areas may serve the State and its people better if managed and developed into suitable recreational and leisure centers where the public can congregate and where visitors to our State can go as part of their holiday experience. However, the department of land and natural resources is hamstrung by its limited mission. Creating a development arm of the department of land and natural resources, similar to the agribusiness development corporation, and placing appropriate public lands into the new corporation's jurisdiction, may help to create these recreation and leisure areas, while also creating revenue-generating opportunities for the new corporation. In turn, revenues generated may be used to offset the regulatory functions of the department of land and natural resources.

The purpose of this chapter is to create a vehicle and process to make optimal use of public land for the economic, environmental, and social benefit of the people of Hawaii. This chapter establishes a public corporation to administer an appropriate and culturally-sensitive public land development program. The corporation shall coordinate and administer programs to make optimal use of public land, while ensuring that the public land is maintained for the people of Hawaii. The corporation shall identify the public lands that are suitable for development under this chapter, carry on marketing analysis to determine the best revenue-generating programs for the public lands identified, enter into public-private agreements to appropriately develop the public lands identified,

and provide the leadership for the development, financing, improvement, or enhancement of the selected development opportunities.

§ -2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Board” means the board of directors of the public land development corporation.

“Coordinating entrepreneur” means a qualified person capable of organizing, operating, and assuming the risk for enterprises, including securing land and seed capital, developing or managing commercial or recreational facilities or projects, arranging concession agreements, supplying materials, maintaining equipment and infrastructure, and providing for the processing and marketing of services or products.

“Corporation” means the public land development corporation.

“Coventure” means an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure. An investment made by the corporation, which is a direct investment, may later be classified as a coventure upon an investment by a professional investor.

“Department” means the department of land and natural resources.

“Development rights” means the rights permitted under an ordinance or law relating to permitted uses of a property, the density or intensity of use, and the maximum height and size of improvements thereon.

“Direct investment” means an investment by the corporation in qualified securities of an enterprise in which no investment is being or has been made by a professional investor to provide seed capital to the enterprise.

“Enterprise” means a business with its principal place of business in Hawaii, which is or proposes to be engaged in recreational and commercial area development, development of new value-added products, enhancement of existing recreational or commercial commodities, and the application of existing recreation or commercial areas and appurtenant facilities to productive uses.

“Fund” means the Hawaii public lands development revolving fund.

“Private lender” includes banks, savings and loan associations, mortgage companies, and other qualified companies whose business includes the making of loans in the State.

“Professional investor” means any bank, bank holding company, savings institution, farm credit institution, trust company, insurance company, investment company registered under the federal Investment Company Act of 1940, financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the federal Small Business Investment Act of 1958, as amended, or any person, partnership, or other entity of whose resources, a substantial amount is dedicated to investing in securities or debt instruments, and whose net worth exceeds \$250,000.

“Project” means a specific undertaking, improvement, or system consisting of work or improvement, including personal property or any interest therein acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the corporation.

“Project cost” means the total of all costs incurred by the corporation in carrying out all undertakings that it considers reasonable and necessary for the development of a project, including studies; plans; specifications; architectural, engineering, or any other development related services; acquisition of land and any improvement thereon; site preparation and development; construction; re-

construction; rehabilitation; the necessary expenses in administering this chapter; the cost of financing the project; and relocation costs.

“Project facilities” includes improvements, roads and streets, utility and service corridors, utility lines where applicable, water and irrigation systems, lighting systems, security systems, sanitary sewerage systems, and other community facilities where applicable.

“Qualified person” means any individual, partnership, corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible qualifications, as may be deemed desirable by the corporation in administering this chapter.

“Qualified security” means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a “security” or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.

“Revenue bonds” means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any project facility.

“Seed capital” means financing that is provided for the development, refinement, and commercialization of a product or process and other working capital needs.

“Trust indenture” means an agreement by and between the corporation and a trustee that sets forth the duties of the trustee with respect to the revenue bonds, the security thereof, and other provisions as may be deemed necessary or convenient by the corporation to secure the revenue bonds.

“Trustee” means a national or state bank or trust company, within or outside the State, that enters into a trust indenture.

“Value-added” means any activity that increases, by means of development or any other means, the value of public lands.

§ -3 Public land development corporation; established. (a) There is established the public land development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be headed by the board. The corporation shall be placed within the department for administrative purposes.

The corporation shall coordinate and administer programs to make optimal use of public land, while ensuring that the public land is maintained for the people of Hawaii. The corporation shall identify the public lands that are suitable for development under this chapter, carry on marketing analysis to determine the best revenue-generating programs for the public lands identified, enter into public-private agreements to appropriately develop the public lands identified, and provide the leadership for the development, financing, improvement, or enhancement of the selected development opportunities. Permissible uses of public land pursuant to this chapter shall include but not be limited to office space; vehicular parking; commercial uses; hotel, residential, and timeshare uses; fueling facilities; storage and repair facilities; and seawater air conditioning plants.

(b) The board of directors of the public land development corporation shall consist of five voting members. The members shall include:

- (1) The chairperson of the board of land and natural resources, or the first deputy to the chairperson of the board of land and natural resources;

- (2) The director of finance, or the director's designee;
 - (3) The director of business, economic development, and tourism, or the director's designee;
 - (4) One member to be appointed by the speaker of the house of representatives; and
 - (5) One member to be appointed by the president of the senate;
- provided that the persons appointed by the speaker of the house of representatives and the president of the senate shall possess sufficient knowledge, experience, and proven expertise in small and large businesses within the development or recreation industries, banking, real estate, finance, promotion, marketing, or management.

The term of office of the two voting members appointed by the speaker of the house of representatives and the president of the senate shall be four years each.

(c) The board shall appoint an executive director, who shall serve at the pleasure of the board and shall be exempt from chapter 76. The salary of the executive director shall be set by the board.

(d) The board, through its executive director, may appoint officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, without regard to chapter 76.

§ -4 Powers; generally. (a) Except as otherwise limited by this chapter, the corporation may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;
- (3) Make and alter bylaws for its organization and internal management;
- (4) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties;
- (5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (6) Carry out surveys, research, and investigations into technological, business, financial, consumer trends, and other aspects of leisure or recreational land uses in the national and international community;
- (7) Acquire or contract to acquire by grant or purchase:
 - (A) All privately owned real property or any interest therein and the improvements thereon, if any, that are determined by the corporation to be necessary or appropriate for its purposes under this chapter, including real property together with improvements, if any, in excess of that needed for such use in cases where small remnants would otherwise be left or where other justifiable cause necessitates the acquisition to protect and preserve the contemplated improvements, or public policy demands the acquisition in connection with such improvements; and
 - (B) Encumbrances, in the form of leases, licenses, or otherwise, needed by the corporation or any state department or agency for public purposes, the disposition of subdivided lots, houselots, apartments or other economic units, or economic development;

- (8) Own, hold, improve, and rehabilitate any real, personal, or mixed property acquired; and sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber the same;
- (9) By itself, or in partnership with qualified persons or other governmental agencies, acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project; and develop or manage, by itself, or in partnership with qualified persons or other governmental agencies, any project that meets the purposes of this chapter;
- (10) In cooperation with any governmental agency, or otherwise through direct investment or coventure with a professional investor or enterprise or any other person, or otherwise, acquire, construct, operate, and maintain public land facilities, including but not limited to leisure, recreational, commercial, residential, timeshare, hotel, office space, and business facilities, at rates or charges determined by the corporation;
- (11) Assist developmental, recreational, and visitor-industry related enterprises, or projects developed or managed by the corporation, by conducting detailed marketing analysis and developing marketing and promotional strategies to strengthen the position of those enterprises and to better exploit local, national, and international markets;
- (12) Receive, examine, and determine the acceptability of applications of qualified persons for allowances or grants for the development of new recreation and visitor-industry related products, the expansion of established recreation and visitor-industry or land development enterprises, and the altering of existing recreational, visitor-industry related, or land development enterprises;
- (13) Coordinate its activities with any federal or state programs;
- (14) Grant options to purchase any project or to renew any lease entered into by the corporation in connection with any of its projects, on the terms and conditions it deems advisable;
- (15) Provide advisory, consultative, training, and educational services and technical assistance to any person, partnership, or corporation, either public or private, to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (16) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;
- (17) Accept gifts or grants in any form from any public agency or any other source;
- (18) Issue bonds to finance the cost of a project and to provide for the security thereof, in the manner and pursuant to the procedure prescribed in this chapter;
- (19) Subject to approval by the department, assume management responsibilities for small boat harbors in accordance with chapter 200 and any rules adopted pursuant thereto for periods not to exceed one year;
- (20) Recommend to the board of land and natural resources the purchase of any privately owned properties that may be appropriate for development; and

(21) Do all things necessary or proper to carry out the purposes of this chapter.

(b) Notwithstanding subsection (a) to the contrary, the corporation shall not acquire, contract to acquire by grant or purchase, own, hold, sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber any real, personal, or mixed property that is owned by the department as of July 1, 2011, except as expressly provided in this chapter.

(c) The powers conferred herein shall be liberally construed to effectuate the purposes of this chapter.

§ -5 Hawaii public land optimization plan. (a) The corporation shall prepare the Hawaii public land optimization plan, which shall define and establish goals, objectives, policies, and priority guidelines for its public land optimization development strategy. The plan shall include:

- (1) An inventory of public lands with suitable, adequate development potential that are or will become available that can be used to meet present and future land development needs;
- (2) Protection of culturally-sensitive areas;
- (3) Feasible strategies for the promotion and marketing of any projects, including but not limited to leisure, recreational, commercial, residential, timeshare, hotel, office space, and business projects, in local, national, and international markets;
- (4) Proposals to improve the gathering of data and the timely presentation of information on market demands and trends that can be used to plan future projects; and
- (5) Strategies for federal and state legislative actions that will promote the development and enhancement of Hawaii's public lands.

(b) The corporation shall revise the Hawaii public lands optimization plan from time to time and shall incorporate the plan in its annual report to the governor and the legislature as provided in section -20.

§ -6 Public lands optimization projects; development plans. (a) The corporation may develop and implement public lands optimization projects where appropriate public lands may be developed or managed to create revenue-generating centers or where, through detailed analysis, opportunities exist to exploit potential local, national, and international markets.

(b) The corporation may initiate and coordinate the preparation of business and public land development plans for its projects. The plans shall include a proposal for the organization of the enterprise, a marketing strategy, marketing-related information, the impact on existing development or visitor-related industries throughout the State, and a recommendation for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any infrastructure or accessory facilities in connection with any project.

(c) The corporation may enter into cooperative agreements with coordinating entrepreneurs or public agencies when the powers, services, and capabilities of the persons or agencies are deemed necessary and appropriate for the development and implementation of the business and public land development plans.

(d) Notwithstanding any provision of this chapter to the contrary, when leasing corporation-controlled public land, the corporation may contract with a financial institution chartered under chapter 412 or a federal financial institution, as defined under section 412:1-109, that transacts business in this State to provide lease management services. For the purposes of this subsection, "lease management services" includes the collection of lease rent and any other moneys

owed to the corporation related to the lease of public land under the corporation's control.

(e) The public land planning activities of the corporation shall be coordinated with the county planning departments and the county land use plans, policies, and ordinances.

(f) The corporation may amend the business and public land development plans as may be necessary or appropriate.

(g) Any undertaking by the corporation pursuant to this chapter shall be with the express written consent of the landowner or landowners directly affected.

§ -7 Project facility program. (a) The corporation may develop a project to identify necessary project facilities within a project area.

(b) Unless and except as otherwise provided by law, whenever the corporation undertakes, or causes to be undertaken, any project facility as part of a project, the cost of providing the project facilities shall be assessed against the real property in the project area specially benefiting from the project facilities. Subject to the express written consent of the landowners directly affected, the corporation shall determine the properties that will benefit from the project facilities to be undertaken and may establish assessment areas that include the properties specially benefiting from the project facilities. The corporation shall fix the assessments against the real property specially benefited.

(c) Unless and except as otherwise provided by law, the corporation may adopt rules pursuant to chapter 91 to establish the method of undertaking and financing project facilities in a project area.

(d) Any other law to the contrary notwithstanding, in assessing real property for project facilities, the corporation shall assess the real property within a project area according to the special benefits conferred upon the real property by the project facilities. These methods may include an assessment on a frontage basis or according to the area of real property within a project area, or any other assessment method that assesses the real property according to the special benefit conferred, or any combination thereof. No assessment levied under this section against real property specially benefited under this chapter shall constitute a tax on real property within the meaning of any law.

(e) Any other provisions to the contrary notwithstanding, the corporation, at its discretion, may enter into any agreement with the county in which project facilities are located, to implement the purposes of this section.

(f) If all or a part of the project facilities to be financed through bonds by the corporation may be dedicated to the county in which the project facilities are to be located, the corporation shall ensure that the project facilities or applicable portions thereof are designed and constructed to meet county requirements.

§ -8 Approval of projects, plans, and programs. All public lands optimization projects, public land development plans, and project facility programs developed by the corporation shall be approved by the board.

§ -9 Bonds. (a) The corporation, with the approval of the governor, may issue, from time to time, revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of constructing, acquiring, remodeling, furnishing, and equipping any project facility, including the acquisition of the site of the facility; or acquiring non-public lands through purchase to sustain and preserve leisure or recreational enterprises within a contiguous geographic area.

(b) All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter.

(c) The revenue bonds shall be issued in the name of the corporation and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance.

§ -10 Revenue bonds; payment and security. (a) The revenue bonds shall be payable from and secured by the improvements to real properties specially benefited or improved and the assessments thereon, or by the revenues derived from the project facility for which the revenue bonds were issued, including revenue derived from insurance proceeds and reserve accounts, and earnings thereon.

(b) The corporation may pledge revenues derived from the project facility financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the corporation to secure the loans.

(d) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation, from and after the time that the financing statement with respect to the revenues, moneys, or property so pledged and thereafter received are filed with the bureau of conveyances. Upon the filing, the revenues, moneys, or property so pledged and thereafter received by the corporation shall immediately be subject to a lien of any pledge without any physical delivery thereof or having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether the parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this chapter.

§ -11 Revenue bonds; interest rate, price, and sale. (a) The revenue bonds issued pursuant to this chapter shall bear interest at a rate or rates and shall be payable on a date or dates, as the corporation shall determine.

(b) The corporation shall include the costs of undertaking the project facility for which the revenue bonds are issued in determining the principal amount of revenue bonds to be issued. In determining the cost of undertaking the project facility, the corporation may include:

- (1) The cost of constructing, acquiring, remodeling, furnishing, and equipping the project facility, including the acquisition of the site of the facility;
- (2) The cost of purchasing or funding loans or other agreements entered into for the project facility;
- (3) The costs of studies and surveys;
- (4) Insurance premiums;
- (5) Underwriting fees;
- (6) Financial consultant, legal, accounting, and marketing services incurred;
- (7) Reserve account, trustee, custodian, and rating agency fees; and
- (8) Any capitalized interest.

(c) The revenue bonds may be sold at public or private sale, and for a price as may be determined by the corporation.

§ -12 Revenue bonds; investment of proceeds and redemption. Subject to any agreement with the holders of its revenue bonds, the corporation may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of revenue bonds, in any investment in accordance with procedures prescribed in a trust indenture; and
- (2) Purchase its revenue bonds out of any fund or money of the corporation available therefor, and hold, cancel, or resell the revenue bonds.

§ -13 Revenue bonds; subaccounts. A separate subaccount shall be established for each project facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each subaccount shall be designated "project facility revenue bond subaccount" and shall bear additional designation as the corporation deems appropriate to properly identify the fund.

§ -14 Trustee; designation, duties. (a) The corporation shall designate a trustee for each issue of revenue bonds secured under the same trust indenture.

(b) The trustee shall be authorized by the corporation to hold and administer the project facility revenue bond subaccount established pursuant to section -13, to receive and receipt for, hold, and administer the revenues derived by the corporation from the project facility for which the revenue bonds were issued, and to apply these revenues to the payment of the cost of:

- (1) Undertaking the project facility;
- (2) Administering and operating the proceedings providing for the issuance of the revenue bonds;
- (3) The principal or interest on these bonds;
- (4) The establishment of reserves; and
- (5) Other purposes as may be authorized in the proceedings providing for the issuance of the revenue bonds.

(c) Notwithstanding section 39-68 to the contrary, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the revenue bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(d) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption of the bonds, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with applicable law.

(e) Nothing in this chapter shall limit or be construed to limit the powers granted to the director of finance in sections 36-3, 39-13, and 39-68(a), to appoint the trustee or others as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§ -15 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as may be deemed necessary or convenient by the corporation for the purposes of this chapter.

(b) A trust indenture may allow the corporation to pledge and assign to the trustee loans and other agreements related to the project facility, and the rights of the corporation thereunder, including the right to receive revenues thereunder and to enforce the provisions thereof.

(c) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of

the project facility, and the use and application of the earnings from investments; and

- (2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(d) A trust indenture may also contain provisions deemed necessary or desirable by the corporation to obtain or permit, by grant, interest, subsidy, or otherwise, the participation of the federal government in the financing of the costs of undertaking the project facility.

§ -16 Transfer of public lands. (a) Notwithstanding chapter 171 or any provision of this chapter to the contrary, the department may transfer, subject to the approval of the board of land and natural resources, development rights for lands under its jurisdiction to the corporation for purposes of this chapter; provided that:

- (1) Development rights for all small boat harbors that have an existing contract in force and effect relating to a lease or development agreement, or a request for proposal that has been advertised or is under negotiation for capital improvements to harbor facilities as of July 1, 2011, shall be transferred to the corporation on July 1, 2011; provided that with regard to any:

- (A) Request for proposal that has been issued for which a contract has not been executed; or
 (B) Contract executed by the department that is in force and effect,

on the effective date of this section that relates to the development or redevelopment of submerged or fast lands of a small boat harbor under the control of the department, if the public land corporation is not fully operational by July 1, 2011, the department shall continue to execute its responsibilities relating to negotiating or executing a contract for any such request for proposal or managing any existing contract until the corporation is able to assume the negotiating, oversight, and management responsibilities relating to the existing contract or request for proposal, as the case may be, or until June 30, 2013, whichever occurs first;

- (2) If the property to be developed is two hundred acres or less and the board of land and natural resources approves the transfer of development rights appurtenant to the property to be developed, the development rights shall be transferred to the corporation;
- (3) If the property to be developed is greater than two hundred acres and the board of land and natural resources approves the transfer of development rights appurtenant to the property to be developed, the development rights shall be transferred to the corporation, subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both houses in any regular or special session next following the date of transfer; and
- (4) The size of any property to be developed shall be deemed to be conclusively determined by the state surveyor, as established in section 26-6.

(b) If the corporation finds that state lands under the control and management of the department or other public agencies are suitable for its purposes under this chapter, the corporation may lease the lands from the agency having the control and management of those lands, upon such terms and conditions as may be agreed to by the parties.

(c) Notwithstanding subsection (b) to the contrary, no public lands shall be leased to the corporation if the lease would impair any covenant between the State or any county, or any department or board thereof, and the holders of bonds issued by the State or the county, or any department or board thereof.

§ -17 Hawaii public land development revolving fund; established; use of corporation funds. (a) There is established the Hawaii public land development revolving fund, to which shall be credited any state appropriations to the fund, any sums collected as a result of bonds issued pursuant to this chapter, any revenues generated from the facilities, or other moneys made available to the fund, to be expended as directed by the corporation.

(b) Notwithstanding any provision of this chapter to the contrary, revenues, income, and receipts derived from the project facilities shall be set apart in a separate subaccount and applied solely for the following purposes:

- (1) The principal and interest on the bonds;
- (2) The cost of administering, operating, and maintaining the project not to exceed fifteen per cent of the sums collected, net of principal and interest payments, on account of assessments and interest for any specific project facility;
- (3) The establishment of program reserves not to exceed eighty-five per cent of the sums collected, net of principal and interest payments, on account of assessments and interest for any specific project facility; provided that accumulated reserves shall be credited to and become a part of the special land and development fund, established under section 171-19, except in the case of a specific project facility that is situated in part or wholly within a small boat harbor, in which case those accumulated reserves attributable to the portions of the facility situated in the small boat harbor shall be credited to and become a part of the boating special fund, established under section 248-8; and
- (4) Other purposes as may be authorized in the proceedings providing for the issuance of the bonds.

If any surplus remains in any subaccount after the payment of the bonds chargeable against that subaccount, the surplus shall be credited to and become a part of the Hawaii public land development revolving fund, except as provided in paragraph (3). Notwithstanding any other law to the contrary, moneys in the fund may be used to make up any deficiencies in the subaccount.

(c) The corporation shall hold the fund in an account or accounts separate from other funds. Except as otherwise provided in subsection (b), the corporation shall invest and reinvest the fund and the income thereof to:

- (1) Purchase qualified securities issued by enterprises for the purpose of raising seed capital; provided that the investment shall comply with the requirements of this chapter;
- (2) Make grants, loans, and provide other monetary forms of assistance necessary to carry out the purposes of this chapter; and
- (3) Purchase securities as may be lawful investments for fiduciaries in the State.

All appropriations, grants, contractual reimbursements, and other funds not designated for this purpose may be used to pay for the proper general expenses and to carry out the purposes of the corporation.

(d) The corporation shall purchase qualified securities issued by an enterprise only after:

- (1) Receiving:
 - (A) An application from the enterprise containing a business plan, which is consistent with the business and public land development plan, including a description of the enterprise and its management, product, and market;
 - (B) A statement of the amount, timing, and projected use of the capital required;
 - (C) A statement of the potential economic impact of the enterprise, including the number, location, and types of jobs expected to be created; and
 - (D) Any other information as the corporation shall require;
 - (2) Determining, based upon the application submitted, that:
 - (A) The proceeds of the investment will be used only to cover the seed capital needs of the enterprise, except as authorized in this section;
 - (B) The enterprise has a reasonable chance of success;
 - (C) The enterprise has the reasonable potential to create employment within the State and offers employment opportunities to residents;
 - (D) The coordinating entrepreneur and other founders of the enterprise have already made or are prepared to make a substantial financial and time commitment to the enterprise;
 - (E) The securities to be purchased are qualified securities;
 - (F) There is a reasonable possibility that the corporation will recoup at least its initial investment; and
 - (G) Binding commitments have been made to the corporation by the enterprise for adequate reporting of financial data to the corporation, which shall include a requirement for an annual or other periodic audit of the books of the enterprise, and for control by the corporation that it considers prudent over the management of the enterprise, in order to protect the investment of the corporation, including membership on the board of directors of the enterprise, ownership of voting stock, input in management decisions, and the right of access to the financial and other records of the enterprise; and
 - (3) Entering into a binding agreement with the enterprise concerning the manner of payback by the enterprise of the funds advanced, granted, loaned, or received from the corporation. The manner of payback may include the payment of dividends, returns from the public sale of corporate securities or products, royalties, and other methods of payback acceptable to the corporation. In determining the manner of payback the corporation shall establish a rate of return or rate of interest to be paid on any investment, loan, or grant of corporation funds under this section.
- (e) If the corporation makes a direct investment, it shall also find that a reasonable effort has been made to find a professional investor to make an investment in the enterprise as a coventure, and that the effort was unsuccessful. The findings, when made by the corporation, shall be conclusive.

(f) The corporation shall make investments in qualified securities issued by an enterprise in accordance with the following limits:

- (1) Not more than \$500,000 shall be invested in the securities of any one enterprise, except that more than a total of \$500,000 may be invested in the securities of any one enterprise if the corporation finds, after its initial investment, that additional investments in that enterprise are required to protect the initial investment of the corporation, and the other findings set forth in subsection (d) and this subsection are made as to the additional investment;
 - (2) The corporation shall not own securities representing more than forty-nine per cent of the voting stock of any one enterprise at the time of purchase by the corporation after giving effect to the conversion of all outstanding convertible securities of the enterprise, except that if a severe financial difficulty of the enterprise occurs, threatening the investment of the corporation in the enterprise, a greater percentage of those securities may be owned by the corporation; and
 - (3) Not more than fifty per cent of the assets of the corporation shall be invested in direct investments at any time.
- (g) No investment, loan, grant, or use of corporate funds for the purposes of this chapter shall be subject to chapter 42F.

§ -18 Exemption from taxation. The corporation shall not be required to pay state taxes of any kind.

§ -19 Exemption from requirements. Notwithstanding section 171-42 and except as otherwise noted in this chapter, projects pursuant to this chapter shall be exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to special improvement district assessments or requirements; land use, zoning, and construction standards for subdivisions, development, and improvement of land; and the construction, improvement, and sale of homes thereon; provided that the public land planning activities of the corporation shall be coordinated with the county planning departments and the county land use plans, policies, and ordinances.

§ -20 Annual report. The corporation shall submit to the governor and the legislature, no later than twenty days prior to the convening of each regular session, a complete and detailed report of its plans and activities.”

SECTION 2. Section 206E-4, Hawaii Revised Statutes, is amended to read as follows:

“§206E-4 Powers; generally. Except as otherwise limited by this chapter, the authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;

- (6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76;
- (7) Prepare or cause to be prepared a community development plan for all designated community development districts;
- (8) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;
- (9) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements;
- (10) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project which the authority has theretofore sold or otherwise conveyed, transferred, or disposed of;
- (11) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property rights or for the furnishing of property or services in connection with a project;
- (12) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on such terms and conditions as it deems advisable;
- (13) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;
- (14) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (15) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
- (16) Contract for and accept gifts or grants in any form from any public agency or from any other source;
- (17) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter; ~~and~~
- (18) Allow satisfaction of any affordable housing requirements imposed by the authority upon any proposed development project through the construction of reserved housing, as defined in section 206E-101, by a person on land located outside the geographic boundaries of the authority's jurisdiction; provided that the authority shall not permit any person to make cash payments in lieu of providing reserved housing, except to account for any fractional unit that results

after calculating the percentage requirement against residential floor space or total number of units developed. The substituted housing shall be located on the same island as the development project and shall be substantially equal in value to the required reserved housing units that were to be developed on site. The authority shall establish the following priority in the development of reserved housing:

- (A) Within the community development district;
- (B) Within areas immediately surrounding the community development district;
- (C) Areas within the central urban core;
- (D) In outlying areas within the same island as the development project.

The Hawaii community development authority shall adopt rules relating to the approval of reserved housing that are developed outside of a community development district. The rules shall include, but are not limited to, the establishment of guidelines to ensure compliance with the above priorities[-]; and

- (19) Assist the public land development corporation established by section -3 in identifying public lands that may be suitable for development, carrying on marketing analysis to determine the best revenue-generating programs for the public lands identified, entering into public-private agreements to appropriately develop the public lands identified, and providing the leadership for the development, financing, improvement, or enhancement of the selected development opportunities; provided that no assistance shall be provided unless the authority authorizes the assistance."

SECTION 3. There is appropriated out of the land conservation fund established pursuant to section 173A-5, Hawaii Revised Statutes, the sum of \$135,500 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 for:

- (1) The establishment and operation of the public land development corporation; and
- (2) The funding for three staff positions as follows:
 - (A) Executive director of the corporation;
 - (B) A planner; and
 - (C) A project-development specialist.

The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved May 20, 2011.)

ACT 56

H.B. NO. 1313

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Windward Nazarene Academy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$15,000,000, in one or more series, for the purpose of assisting Windward Nazarene Academy, a Hawaii not-for-profit corporation, for the purchase of land and facilities, and for planning, construction, improvement, equipping, and renovation of its educational facilities in the State of Hawaii. The legislature hereby finds and determines that the purchase of land and facilities, and the planning, construction, improvement, equipping, and renovation of its educational facilities constitute a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit private nonsectarian or sectarian elementary school, secondary school, college, or university that serves the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist a not-for-profit private nonsectarian or sectarian elementary school, secondary school, college, or university that serves the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2016, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from

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federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2016.

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved May 20, 2011.)

ACT 57

H.B. NO. 575

A Bill for an Act Relating to Salaries.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 85, Session Laws of Hawaii 2009, is amended by amending section 2 to read as follows:

“SECTION 2. (a) Notwithstanding any law to the contrary and notwithstanding the recommendations of the commission on salaries for salary increases, beginning July 1, 2009, and until [~~June 30, 2011,~~] December 31, 2013, the annual salaries of the governor, the lieutenant governor, the justices and judges of all state courts, the administrative director of the State or an equivalent position, and the department heads or executive officers and the deputies or assistants to the department heads or executive officers of the departments of:

- (1) Accounting and general services;
- (2) Agriculture;
- (3) The attorney general;
- (4) Budget and finance;
- (5) Business, economic development, and tourism;
- (6) Commerce and consumer affairs;
- (7) Defense;
- (8) Hawaiian home lands;
- (9) Health;
- (10) Human resources development;
- (11) Human services;
- (12) Labor and industrial relations;
- (13) Land and natural resources;
- (14) Public safety;
- (15) Taxation; and
- (16) Transportation,

shall be reduced by five per cent from what the salary is as of June 30, 2009, and shall remain at that salary rate until [~~June 30, 2011,~~] December 31, 2013; provided that on [~~July 1, 2011,~~] January 1, 2014, the salaries of these positions shall be restored to the level they would have been on July 1, 2009, without the salary decrease under this Act; provided further that [~~the~~] if any salary recommendations [of] for these positions are made and are to take effect on or after January 1, 2014, by the commission on salaries [for salary increases for these positions effective July 1, 2012,], and the recommendations are not disapproved by the legislature, then the salary recommendations shall become effective on [that] the date specified by the commission on salaries in accordance with [the] its recommendations.

(b) Notwithstanding any law to the contrary and notwithstanding the recommendations of the commission on salaries for salary increases, beginning July 1, 2009, and until ~~[June 30, 2011,]~~ December 31, 2013, the annual salaries of members of the legislature shall be reduced by five per cent from what the salary is as of June 30, 2009; provided that ~~[on July 1, 2011, the salaries of the legislators shall be restored to the level it would have been on July 1, 2009, without the salary decrease under this Act; provided further that]~~ the salary recommendations of the commission on salaries for ~~[salary increases for]~~ legislators effective January 1, ~~[2012,]~~ 2014, shall become effective on that date in accordance with the recommendations.

(c) For the period from July 1, 2009, to ~~[July 1, 2011,]~~ December 31, 2013, notwithstanding any law to the contrary, the leaves of absence for vacation and sick leave, with pay, of persons affected under ~~[subsection]~~ subsections (a) and (b) shall be the same as those negotiated, mediated, or arbitrated under chapter 89, Hawaii Revised Statutes, for collective bargaining unit (13); provided that on ~~[July 1, 2011,]~~ January 1, 2014, the leaves of absence under this subsection shall be either: restored to the level they would have been on July 1, 2009, but for this subsection[-]; or commensurate with any salary adjustment recommended for any period on or after January 1, 2014, by the commission on salaries and not disapproved by the legislature.

(d) This section shall not be construed to impart any right to additional compensation previously authorized through the adoption of the commission on salaries' recommendations for[-]

- (1) ~~The~~ the period from January 1, 2009, through ~~[July 1, 2011, for positions covered under subsection (a); and~~
- (2) ~~The period from January 1, 2009, through December 31, 2011,]~~ December 31, 2013, for positions covered under [subsection (b)-] subsections (a) and (b).

(e) This section shall not be enforced to the extent that it is preempted by federal law.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2011.

(Approved May 26, 2011.)

ACT 58

H.B. NO. 404

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Palolo Chinese Home and its Subsidiaries.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$40,000,000, in one or more series, for the purpose of assisting Palolo Chinese Home, a Hawaii not-for-profit corporation, and its not-for-profit subsidiaries, to

finance the expansion, construction, and rebuilding of its health care facilities. The legislature hereby finds and determines that the activities and facilities of Palolo Chinese Home constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit corporation that provides health care facilities to the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2016, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2016.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved May 26, 2011.)

ACT 59

H.B. NO. 838

A Bill for an Act Relating to Reapportionment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to make an emergency appropriation to:

- (1) Fund five full-time, temporary positions, authorized by this Act, in the office of elections to provide support to the reapportionment commission; and
- (2) Provide funds for the functions of the reapportionment commission, office of elections, and the elections commission in regards to reapportionment.

Without an emergency appropriation and the authorization of full-time temporary positions in the office of elections, the reapportionment commission will not be able to complete its work.

SECTION 3. There is authorized five full-time, temporary positions in the office of elections to provide support to the reapportionment commission.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$664,430 or so much thereof as may be necessary for fiscal year 2010-2011 for the purpose of supporting the functions of the office of elections, the elections commission, and the reapportionment commission in regards to reapportionment.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 26, 2011.)

ACT 60

H.B. NO. 301

A Bill for an Act Relating to the Judiciary Computer System Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 601-3.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury a special fund to be known as the judiciary computer system special fund~~[-]~~, which shall contain the following:

- (1) Moneys collected from administrative fees pursuant to section 287-3(a) ~~[and fees];~~
- (2) Fees prescribed by the supreme court by rule of court for electronic document certification, electronic copies of documents, and for providing bulk access to electronic court records and compilations of data; and
- (3) Fees pursuant to sections 607-4(b)(10) and 607-5(c)(32) [shall be deposited into the fund].”

SECTION 2. Section 607-1, Hawaii Revised Statutes, is amended to read as follows:

“**§607-1 Power of supreme court with respect to costs and fees.** The supreme court shall have power by rule of court, from time to time, to revise, amend, add to, or eliminate any of the items of costs and fees provided in this chapter, to prescribe such costs and fees as it deems reasonable in all cases not therein provided for, and to prescribe the amount to be paid in advance to the clerk of any court in any proceeding on account of the costs and fees. All fees prescribed by the supreme court by rule of court for electronic document certification, electronic copies of documents, and for providing bulk access to electronic court records and compilations of data shall be deposited into the judiciary computer system special fund.”

SECTION 3. Section 607-2, Hawaii Revised Statutes, is amended to read as follows:

“**§607-2 Fees to be accounted for.** With the exception of ~~[such fees as are]~~ fees prescribed by the supreme court by rule of court for electronic docu-

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ment certification, electronic copies of documents, and for providing bulk access to electronic court records and compilations of data, which shall be deposited into the judiciary computer system special fund, and fees intended to reimburse officers for actual expenditures made by them, all judges', clerks', sheriffs', and deputy sheriffs' fees provided for in this chapter and accruing from any action pending in any court shall be deposited to the credit of the general fund of the State."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved May 26, 2011.)

ACT 61

H.B. NO. 300

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

PART I GENERAL PROVISIONS

SECTION 1. This Act shall be known and may be cited as the Judiciary Appropriations Act of 2011.

SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the judiciary (JUD) followed by a designated number for the program.

(b) "Means of Financing," or "MOF," means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. The letter symbols, where used, shall have the following meanings:

- A General funds
- B Special funds
- C General obligation bond funds
- N Other federal funds
- W Revolving funds

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

PART II PROGRAM APPROPRIATIONS

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2011, and ending June 30, 2013. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
The Judicial System						
1.	JUD101	COURTS OF APPEAL				
	OPERATING		JUD	79.00*	79.00*	
			JUD	6,835,851 A	6,835,851 A	
				243,261 W	243,261 W	
2.	JUD310	FIRST JUDICIAL CIRCUIT				
	OPERATING		JUD	1,057.50*	1,057.50*	
			JUD	71,483,812 A	71,483,812 A	
			JUD	41.00*	41.00*	
			JUD	4,002,620 B	4,002,620 B	
3.	JUD320	SECOND JUDICIAL CIRCUIT				
	OPERATING		JUD	205.00*	205.00*	
			JUD	14,777,500 A	14,777,500 A	
4.	JUD330	THIRD JUDICIAL CIRCUIT				
	OPERATING		JUD	223.00*	223.00*	
			JUD	17,416,310 A	17,416,310 A	
5.	JUD350	FIFTH JUDICIAL CIRCUIT				
	OPERATING		JUD	97.00*	97.00*	
			JUD	6,709,385 A	6,709,385 A	
6.	JUD501	JUDICIAL SELECTION COMMISSION				
	OPERATING		JUD	1.00*	1.00*	
			JUD	90,248 A	90,248 A	
7.	JUD601	ADMINISTRATION				
	OPERATING		JUD	213.00*	213.00*	
			JUD	15,352,551 A	15,352,551 A	
			JUD	1.00*	1.00*	
			JUD	6,930,290 B	6,930,290 B	
			JUD	100,000 W	100,000 W	
	INVESTMENT CAPITAL		JUD	17,074,000 C	14,350,000 C	

PART III PROGRAM PROVISIONS

SECTION 4. Provided that whenever the need arises, the chief justice, in administering an equitable and expeditious judicial process, is authorized to transfer sufficient funds and positions between programs for operating purposes; and provided further that no transfer shall be made to implement any collective bargaining contract signed after this legislature adjourns sine die.

SECTION 5. Provided that if the chief justice, or any agency, or any government unit secures federal funds or other property under any act of Congress, or any funds or other property from private organizations or individuals that are to be expended in connection with any program or works authorized by this Act, or otherwise, the chief justice, or the agency with the chief justice's approval, shall have the power to enter into the undertaking with the federal government, private organization, or individual.

SECTION 6. Provided that the judiciary is authorized to transfer savings from its general fund appropriation to the driver education special fund to accommodate any temporary cash flow deficits.

PART IV CAPITAL IMPROVEMENT PROJECTS

SECTION 7. The sum of \$31,424,000 appropriated or authorized in part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. The amount after each cost element and the total funding for each project listed in this part is in thousands of dollars.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
A. ECONOMIC DEVELOPMENT					
JUD601 - ADMINISTRATION					
1.		KAAHUMANU HALE ROOF AND LANAI UPGRADES AND IMPROVEMENTS, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR ROOF AND LANAI UPGRADES AND IMPROVEMENTS AT KAAHUMANU HALE, OAHU.			
		PLANS		80	
		DESIGN		360	
		CONSTRUCTION		4,205	
		TOTAL FUNDING	JUD	4,645C	C
2.		KONA JUDICIARY COMPLEX, HAWAII			
		LAND AND DESIGN FOR A NEW JUDICIARY COMPLEX AT KONA, HAWAII.			
		LAND		4,500	
		DESIGN			7,500
		TOTAL FUNDING	JUD	4,500C	7,500C
3.		KAPUAIWA BUILDING WINDOW REPLACEMENT AND UPGRADE, OAHU			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT AND UPGRADE OF WINDOWS AT KAPUAIWA BUILDING, OAHU.			
		DESIGN		185	
		CONSTRUCTION			1,850
		TOTAL FUNDING	JUD	185C	1,850C
4.		KAUIKEAOULI HALE CELLBLOCK UPGRADE AND IMPROVEMENTS, OAHU			
		PLANS AND DESIGN FOR SECURITY-RELATED UPGRADE AND IMPROVEMENTS TO THE MAIN CELLBLOCK AND CUSTODY HOLDING AREAS AT KAUIKEAOULI HALE, OAHU.			
		PLANS		65	
		DESIGN		240	
		TOTAL FUNDING	JUD	305C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
5.		KAAHUMANU HALE FIRE ALARM SYSTEM UPGRADE AND IMPROVEMENTS, OAHU			
		PLANS AND DESIGN FOR FIRE ALARM SYSTEMS UPGRADE AND IMPROVEMENTS AT KAAHUMANU HALE, OAHU.			
		PLANS		7	
		DESIGN		140	
		TOTAL FUNDING	JUD	147C	C
6.		KAAHUMANU HALE ELEVATOR SYSTEM UPGRADE AND MODERNIZATION, OAHU			
		PLANS AND DESIGN FOR UPGRADES AND MODERNIZATION TO THE ELEVATORS AT KAAHUMANU HALE, OAHU.			
		PLANS		22	
		DESIGN		270	
		TOTAL FUNDING	JUD	292C	C
7.		LUMP SUM CIP FOR JUDICIARY FACILITIES, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE GENERAL ALTERATIONS, UPGRADES, AND IMPROVEMENTS TO JUDICIARY FACILITIES, STATEWIDE.			
		PLANS		250	250
		DESIGN		2,250	2,250
		CONSTRUCTION		2,250	2,250
		EQUIPMENT		250	250
		TOTAL FUNDING	JUD	5,000C	5,000C
8.		WAHIAWA COURT FACILITY, OAHU			
		PLANS AND DESIGN FOR A PERMANENT COURT FACILITY FOR WAHIAWA, OAHU.			
		PLANS		1	
		DESIGN		1,999	
		TOTAL FUNDING	JUD	2,000C	C

PART V ISSUANCE OF BONDS

SECTION 8. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in part II and listed in part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed \$31,424,000.

PART VI SPECIAL PROVISIONS

SECTION 9. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized in part II and listed in part IV of this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all appropriations made for fiscal year 2011-2012 and fiscal year 2012-2013 that are unencumbered as of June 30, 2014, shall lapse as of that date.

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SECTION 10. The judiciary is authorized to delegate to other state or county agencies the planning, acquisition of land, design, construction, and equipment of any capital improvement project when it is determined by the judiciary to be advantageous to do so.

SECTION 11. All unrequired balances in the general obligation bond fund, after the objectives of part II appropriations for capital improvements program purposes listed as projects in part IV of this Act have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 12. If the amount allocated from the general obligation bond fund for a capital improvement project listed in part IV of this Act is insufficient, the chief justice may make supplemental allotments from the project adjustment fund; provided that supplemental allotments shall not be used to increase the scope of the project.

SECTION 13. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a project listed in part IV of this Act, the chief justice may authorize such reduction of project scope.

SECTION 14. The chief justice shall determine when and the manner in which the authorized capital improvement projects shall be initiated. The chief justice shall notify the governor from time to time of the specific amounts required for the projects, and the governor shall provide for those amounts through the issuance of bonds authorized in part V of this Act.

SECTION 15. Any law or any provision of the law to the contrary notwithstanding, the chief justice may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or by any other prior or future Act that have not lapsed; provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project.

PART VII MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 16. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of this Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 17. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next regular session.

SECTION 18. This Act shall take effect on July 1, 2011.

(Approved May 26, 2011.)

ACT 62

S.B. NO. 1270

A Bill for an Act Relating to the Hawaii Hurricane Relief Fund.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Hawaii State Constitution.

SECTION 2. Hawaii is facing one of the most challenging economic periods in its history. Current economic conditions have necessitated difficult decisions by the State to balance an already precarious budget. The reduction-in-force in state government has reduced services to the public and has also had an adverse effect on the efficiency and effectiveness of certain key operational areas. Funding reductions have also affected the State's ability to provide services to those who are most vulnerable to setbacks during this time of economic uncertainty and have affected the State's ability to fuel and sustain an economic recovery.

The recent 8.9 magnitude earthquake in Japan and ensuing tsunami have resulted in severe consequences for Hawaii's economy, including reductions in tourism bookings and downward revisions of anticipated revenues. These economic injuries continue to burden the community.

The council on revenues has substantially reduced its estimate of general fund revenues for fiscal year 2010-2011.

The purpose of this Act is to appropriate Hawaii hurricane relief fund moneys from the hurricane reserve trust fund into the general fund to make funds available to balance the State's budget for fiscal year 2010-2011 and to maintain programs at levels determined to be essential for education, public health, and public welfare.

If additional moneys are required to address the general fund shortfall in fiscal year 2010-2011, this Act also authorizes the governor to transfer all or a portion of the remaining balance of the hurricane reserve trust fund into the general fund.

The legislature intends that the appropriated or transferred Hawaii hurricane relief fund moneys be expended after the expenditure, encumbrance, or allotment of the emergency and budget reserve funds and non-general funds designated for use in fiscal year 2010-2011 under Senate Bill No. 1293¹ and Senate Bill No. 120².

This Act also establishes a mechanism for the automatic replenishment of the hurricane reserve trust fund in fiscal years 2013-2014 and 2014-2015.

In the event that the hurricane reserve trust fund needs to be recapitalized before then, this Act authorizes the issuance of revenue bonds by the Hawaii hurricane relief fund for that purpose.

PART II

SECTION 3. For the purpose of this part, "Senate Bill No. 120"² and "Senate Bill No. 1293"¹ refer to those bills in the form enacted into law during the 2011 regular session.

SECTION 4. (a) Notwithstanding provisions of chapter 431P, Hawaii Revised Statutes, or any other law to the contrary, there is appropriated out of

the hurricane reserve trust fund established pursuant to section 431P-16, Hawaii Revised Statutes, the sum of \$42,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 to be deposited into the general fund to balance the State's budget in fiscal year 2010-2011 and maintain programs at levels determined to be essential for education, public health, and public welfare; provided that this appropriation may be deposited into the general fund; provided further that:

- (1) The entire sum appropriated out of the emergency and budget reserve fund under Senate Bill No. 1293¹ is expended, encumbered, or allotted;
 - (2) The director of finance has identified and transferred non-general funds in accordance with Senate Bill No. 120²; and
 - (3) The governor, before depositing any funds from the hurricane reserve trust fund into the general fund pursuant to this section, notifies the president of the senate and speaker of the house of representatives in writing that the deposit shall be made.
- (b) The sum appropriated under this section shall be deposited by the director of finance into the general fund.

SECTION 5. (a) Notwithstanding chapter 36, 37, or 431P, Hawaii Revised Statutes, or any other law to the contrary, the governor by June 30, 2011, may transfer all or a portion of the remaining balance of the hurricane reserve trust fund for deposit into the general fund if the governor finds that the transfer is necessary to balance the State's budget in fiscal year 2010-2011; provided that the funds may be transferred into the general fund only after the occurrence of the following:

- (1) The actions required under section 4(a)(1) and (2) are completed;
 - (2) The entire sum appropriated out of the hurricane reserve trust fund under section 4 is expended, encumbered, or allotted; and
 - (3) The governor, before transferring any funds from the hurricane reserve trust fund pursuant to this section, notifies the president of the senate and speaker of the house of representatives in writing that the transfer shall be made and the amount of the transfer.
- (b) Any funds of the hurricane reserve trust fund transferred pursuant to this section shall be deposited by the director of finance into the general fund.
- (c) For the purpose of this section, the "remaining balance of the hurricane reserve trust fund" means the moneys remaining in the hurricane reserve trust fund after the deposit of the \$42,000,000 out of the hurricane reserve trust fund into the general fund pursuant to section 4.

SECTION 6. In order to determine whether funds appropriated or transferred out of the hurricane reserve trust fund under this part may be expended or encumbered, the director of finance may deposit the following funds into separate accounts within the general fund: funds from the emergency and budget reserve fund appropriated under Senate Bill No. 1293¹; non-general funds transferred or diverted into the general fund under Senate Bill No. 120²; funds from the hurricane reserve trust fund appropriated for deposit into the general fund under section 4; and funds from the hurricane reserve trust fund transferred into the general fund under section 5.

SECTION 7. (a) By January 1, 2012, the governor shall submit a report to the legislature identifying the programs and projects for which expenditures

were made from the funds that were transferred out of the hurricane reserve trust fund.

(b) Nothing in this Act shall be construed as prohibiting any funds that are transferred out of the hurricane reserve trust fund during fiscal year 2010-2011 that remain unexpended or unencumbered on June 30, 2011, from being carried over to fiscal year 2011-2012 as part of an unencumbered general fund surplus. If any funds are carried over, the governor shall identify the amount of the funds that are carried over, recommend whether the funds that are carried over should be returned to the hurricane reserve trust fund in the fiscal biennium 2011-2013, and, if the governor recommends that the funds that are carried over should be returned to the hurricane reserve trust fund, submit proposed legislation to effectuate the return. The information required under this subsection shall be submitted in the report required under subsection (a).

SECTION 8. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

“§237-31 Remittances. All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier’s check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that:

- (1) The sum from all general excise tax revenues realized by the State that represents the difference between \$45,000,000 and the proceeds from the sale of any general obligation bonds authorized for that fiscal year for the purposes of the state educational facilities improvement special fund shall be deposited in the state treasury in each fiscal year to the credit of the state educational facilities improvement special fund; ~~and~~
- (2) A sum, not to exceed \$5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund[-]; and
- (3) A sum from all general excise tax revenues realized by the State that is equal to one-half of the total amount of funds appropriated or transferred out of the hurricane reserve trust fund under sections 4 and 5 of Act , Session Laws of Hawaii 2011, shall be deposited into the hurricane reserve trust fund in fiscal year 2013-2014 and in fiscal year 2014-2015; provided that the deposit required in each fiscal year shall be made by October 1 of that fiscal year.”

PART III

SECTION 9. The Hawaii hurricane relief fund, with the approval of the director of finance and the governor, is authorized to issue revenue bonds at such times and in such amounts not exceeding \$75,000,000 in the aggregate to maintain a balance of \$75,000,000 in the hurricane reserve trust fund established pursuant to section 431P-16, Hawaii Revised Statutes. The proceeds of any revenue bonds issued pursuant to this section shall be deposited into the hurricane reserve trust fund. The bonds shall be issued pursuant to part III of chapter 39, Hawaii Revised Statutes. General excise tax revenues deposited into the hurricane reserve trust fund under section 8 of this Act may be used, together with or separately from other revenues authorized under chapter 431P, Hawaii Revised

Statutes, to pay the debt service on or redeem any revenue bonds issued under this section.

The authorization to issue revenue bonds under this section shall terminate on June 30, 2015, and shall be deemed invalid thereafter.

PART IV

SECTION 10. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State, or its officers and employees, for any action taken by them in the performance of their powers and duties under this Act; provided that notwithstanding any other law to the contrary, this section shall not be construed to prohibit any law or rule adopted pursuant to law or chapters 661 and 662, Hawaii Revised Statutes. Nothing in this Act shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity without regard to whether that person or entity received any benefits under this Act, against the State, or its officers and employees. Nothing in this Act shall be construed as authorizing any claim against the State whatsoever.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved May 26, 2011.)

Notes

- 1. Act 30
- 2. Act 124.

ACT 63

H.B. NO. 1003

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known as the "Protect Victims of Domestic Violence Act."

SECTION 2. Section 707-701, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:

- (a) More than one person in the same or separate incident;
- (b) A law enforcement officer, judge, or prosecutor arising out of the performance of official duties;
- (c) A person known by the defendant to be a witness in a criminal prosecution and the killing is related to the person's status as a witness;
- (d) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section; [or]
- (e) A person while the defendant was imprisoned[-];
- (f) A person from whom the defendant has been restrained, by order of any court, including an ex parte order, from contacting, threatening, or physically abusing pursuant to chapter 586;
- (g) A person who is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order; or

- (h) A person known by the defendant to be a witness in a family court proceeding and the killing is related to the person's status as a witness."

SECTION 3. Section 707-711, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- "(1) A person commits the offense of assault in the second degree if:
- (a) The person intentionally or knowingly causes substantial bodily injury to another;
 - (b) The person recklessly causes serious or substantial bodily injury to another;
 - (c) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;
 - (d) The person intentionally or knowingly causes bodily injury to another with a dangerous instrument;
 - (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this paragraph, "educational worker" means~~[-]~~ any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school; a person who is a volunteer, as defined in section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education; or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function;
 - (f) The person intentionally or knowingly causes bodily injury to any emergency medical services provider who is engaged in the performance of duty. For the purposes of this paragraph, "emergency medical services provider" means emergency medical services personnel, as defined in section 321-222, and physicians, physician's assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital; ~~[or]~~
 - (g) The person intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, "a person employed at a state-operated or -contracted mental health facility" includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility~~[-]; or~~
 - (h) The person intentionally or knowingly causes bodily injury to a person who:
 - (i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or
 - (ii) Is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order."

SECTION 4. Section 707-716, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

- (a) By threatening another person on more than one occasion for the same or a similar purpose;
- (b) By threats made in a common scheme against different persons;
- (c) Against a public servant arising out of the performance of the public servant’s official duties. For the purposes of this paragraph, “public servant” includes but is not limited to an educational worker. “Educational worker” has the same meaning as defined in section 707-711;
- (d) Against any emergency medical services provider who is engaged in the performance of duty. For the purposes of this paragraph, “emergency medical services provider” means emergency medical services personnel, as defined in section 321-222, and physicians, physician’s assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital; [ø€]
- (e) With the use of a dangerous instrument[-]; or
- (f) By threatening a person who:
 - (i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or
 - (ii) Is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2011.

(Approved May 26, 2011.)

A Bill for an Act Relating to Motor Vehicle Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Aftermarket motorcycle frame” means a frame that is manufactured to replace the frame of a motorcycle that was certified by its manufacturer to be in

compliance with all applicable Federal Motor Vehicle Safety Standards as of the date of manufacture, or the frame of a homemade motorcycle that was manufactured not for profit by a person who built the motorcycle as a hobby.”

SECTION 2. Section 286-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The county director of finance shall examine and to the best of the director’s ability determine the genuineness and regularity of every registration and transfer of registration of a vehicle ~~[as in]~~ pursuant to this part ~~[provided, in order]~~ to ensure that every certificate issued for a vehicle ~~[shall contain]~~ contains true statements of the ownership ~~[thereof,]~~ of the vehicle and to prevent the registration of a vehicle by any person not entitled ~~[thereto, and the]~~ to the vehicle. The director of finance may require any applicant to furnish ~~[such]~~ information, in addition to that contained in the application, ~~[as may be]~~ that is necessary to satisfy the director of finance of the truth and regularity of the application. The director of finance may accept any county certificate of title issued for a vehicle as prima facie evidence of ownership for registration and transfer of registration. The director may issue vehicle identification numbers for reconstructed vehicles, special interest vehicles, or motorcycles~~[-, which]~~ that do not have vehicle identification numbers if the director determines that the requirements of this section have been met.

The county director of finance may register a motorcycle with an ~~[after market]~~ aftermarket motorcycle frame, using the ~~[vehicle identification]~~ number of the frame as issued by the ~~[incomplete vehicle]~~ manufacturer of the frame~~[-]~~, the vehicle identification number on the certification label, or a vehicle identification number assigned by the director of finance. A bill of sale and ~~[Manufacturers]~~ Manufacturer’s Statement of Origin for the frame, engine, and transmission must be presented and retained as a part of the permanent county registration records. If a ~~[Manufacturers]~~ Manufacturer’s Statement of Origin is not available for the engine and transmission due to the use of a used or reconstructed engine, transmission, or both, then a bill of sale or other proof of ownership, satisfactory to the director of finance must be presented. Except for motorcycles that are built on an aftermarket motorcycle frame, special interest vehicles, and reconstructed vehicles, any motor vehicle or device that is not certified by the manufacturer to be in compliance with all applicable Federal Motor Vehicle Safety Standards as of the date of manufacturer shall not be registered.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 26, 2011.)

ACT 65

H.B. NO. 1130

A Bill for an Act Relating to Service of Process.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 158, Session Laws of Hawaii 2009, is amended by amending section 8 to read as follows:

ACT 66

“SECTION 8. This Act shall take effect on January 1, 2010~~, and shall be repealed on July 1, 2012.~~”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 26, 2011.)

ACT 66

H.B. NO. 1004

A Bill for an Act Relating to Chapter 480, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 480-14, Hawaii Revised Statutes, is amended to read as follows:

“**§480-14 Suits by the State; amount of recovery.** (a) Whenever the State~~;~~ ~~any county,~~ or any of its political subdivisions or governmental agencies~~;~~ is injured, directly or indirectly, in its business or property by reason of anything forbidden or declared unlawful by this chapter, it may sue to recover threefold the actual damages sustained by it~~;~~

~~(b), whether directly or indirectly.~~ The attorney general may bring an action on behalf of the State~~;~~ ~~any county,~~ or any of its political subdivisions or governmental agencies to recover the damages provided for by this section, or by any comparable provisions of federal law.

~~(c)~~ (b) The attorney general of the State shall be authorized to bring a class action for indirect purchasers asserting claims under this chapter. The attorney general or the director of the office of consumer protection may bring a class action on behalf of consumers based on unfair or deceptive acts or practices declared unlawful by section 480-2. Actions brought under this subsection shall be brought as parens patriae on behalf of natural persons residing in the State~~;~~ to secure threefold damages for injuries sustained by ~~such~~ the natural persons to their property by reason of any violation of this chapter.

~~(d)~~ (c) If judgment is in favor of the State~~;~~ ~~any county,~~ or any of its political subdivisions or governmental agencies under any provision of this chapter, the attorney general or the director of the office of consumer protection shall be awarded reasonable attorney’s fees together with the cost of suit; provided ~~further~~ that in any class action lawsuit brought by the attorney general ~~in~~ on behalf of indirect purchasers, the attorney general shall in addition be awarded an amount commensurate with expenses reasonably expected to be expended in distribution of damages to the indirect purchasers.”

SECTION 2. Section 480-21, Hawaii Revised Statutes, is amended to read as follows:

“**§480-21 Court and venue.** (a) Any criminal action or proceeding~~;~~ ~~whether civil or criminal,~~ authorized by this chapter shall be brought in any appropriate court in the circuit in which the defendant resides, engages in business, or has an agent~~;~~ ~~unless otherwise specifically provided herein.~~

(b) Any civil action or proceeding authorized by this chapter may be brought in any appropriate court.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.
(Approved May 26, 2011.)

ACT 67

H.B. NO. 1093

A Bill for an Act Relating to Commercial Driver Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-231, Hawaii Revised Statutes, is amended by amending the definition of “driving a commercial motor vehicle while under the influence of an intoxicant” to read as follows:

““Driving a commercial motor vehicle while under the influence of an intoxicant” means committing any one or more of the following acts in a commercial motor vehicle:

- (1) Driving a commercial motor vehicle while the person’s alcohol concentration is 0.04 ~~[per cent or more by weight;]~~ or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood;
- (2) Driving under the influence of an intoxicant pursuant to section 291E-61; or
- (3) Refusing to undergo such testing as required by any state or jurisdiction in the enforcement of Section 383.51(b) or 392.5(a)(2) of Title 49~~[.]~~ Code of Federal Regulations.”

SECTION 2. Section 286-240, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- (1) Driving a motor vehicle under the influence of alcohol, a controlled substance, or any drug which impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver’s blood is 0.04 ~~[per cent or more by weight;]~~ or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood;
- (3) Refusing to submit to a test to determine the driver’s alcohol concentration while driving a motor vehicle as required under sections 286-243 and 291E-11;
- (4) Using a motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the motor vehicle driven by the person;
- (6) Unlawful transportation, possession, or use of a controlled substance while on-duty time;
- (7) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver’s commercial driver’s license had been revoked, suspended, or canceled, or the driver was otherwise disqualified from operating a commercial motor vehicle; or

- (8) Causing a fatality through the operation of a commercial motor vehicle, including ~~[but not limited to]~~ the crimes of manslaughter and negligent homicide in any degree.”

SECTION 3. Section 286-242, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A person who drives a commercial motor vehicle ~~[while having an alcohol concentration of 0.01 per cent or more by weight]~~ with an alcohol concentration of 0.01 or more grams of alcohol per two hundred ten liters of breath or with 0.01 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or who refuses to take a test as provided by section 286-243 shall be issued a twenty-four-hour out-of-service order. The driver shall also be placed out-of-service for twenty-four hours if the results of a blood test are not immediately available.

(c) It is unlawful for any person ~~[who has 0.04 per cent or more, by weight, of alcohol in the person's blood]~~ with an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or with 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood to drive a “commercial motor vehicle”, as defined in section 286-2. Any person who violates this provision shall be subject to the penalties as provided in section 286-249.”

SECTION 4. Section 286-243, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) If the driver refuses testing, or submits to a test ~~[which discloses in the driver's body an alcohol concentration of 0.04 per cent or more by weight,]~~ that indicates an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood, the law enforcement officer shall submit an affidavit to a district judge of the circuit in which the driver was stopped or detained stating that the test was authorized pursuant to subsection (a) and that the driver refused to submit to testing, or submitted to a test ~~[which disclosed in the driver's body an alcohol concentration of 0.04 per cent or more by weight,]~~ that indicates an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(e) A hearing to determine the truth and correctness of an affidavit of a law enforcement officer submitted under subsection (d) shall be scheduled to commence before a district judge within twenty days after the affidavit is filed or as soon thereafter as is practicable.

The State shall be represented at the hearing by the prosecuting attorney of the county in which the alleged violation occurred. The district judge shall hear and determine:

- (1) Whether the law enforcement officer who stopped or detained the driver had probable cause to believe that the driver had been either driving or in actual physical control of a commercial motor vehicle, while having any alcohol in the driver's body;
- (2) Whether the driver was lawfully stopped or detained;
- (3) Whether the law enforcement officer informed the driver of the sanctions of section 286-240;
- (4) Whether the driver submitted to a test or tests of the driver's breath or blood or refused to be tested; and
- (5) If the driver submitted to a test or tests, whether the driver's alcohol concentration was 0.04 ~~[per cent or more by weight,]~~ or more grams

of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

The amount of alcohol found in the driver's blood within three hours after the time of the alleged violation as shown by chemical analysis or other analytical techniques of the defendant's blood or breath shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation. Nothing in this section shall be construed as limiting the introduction of relevant evidence of a person's blood alcohol content obtained more than three hours after an alleged violation[;]; provided that the evidence is offered in compliance with the Hawaii rules of evidence. If the judge finds the statements contained in the affidavit are true, the judge shall disqualify the driver from driving a commercial motor vehicle as provided by section 286-240."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved May 26, 2011.)

ACT 68

H.B. NO. 1052

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend chapter 431, Hawaii Revised Statutes, to comply with the federal Nonadmitted and Reinsurance Reform Act of 2010 relating to surplus lines insurance and to enable participation in a multi-state cooperative for the purpose of collecting surplus lines insurance premium taxes and fees and distributing those taxes and fees to the proper states.

SECTION 2. Section 431:1-213, Hawaii Revised Statutes, is amended to read as follows:

"§431:1-213 State defined. State means any state of the United States and the governments of Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the United States Virgin Islands, and the District of Columbia."

SECTION 3. Section 431:1-214, Hawaii Revised Statutes, is amended to read as follows:

"§431:1-214 United States defined. United States, when used to signify a place, means the states of the United States and the governments of Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the United States Virgin Islands, and the District of Columbia."

SECTION 4. Section 431:8-101, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-101 Scope. This article shall apply to the placement of insurance [on any subject resident, located, or to be performed in this State,] in insurers not authorized to transact insurance in [this State.] the state in which the subject resident is located or in which the insurance contract will be performed.”

SECTION 5. Section 431:8-102, Hawaii Revised Statutes, is amended as follows:

1. By adding nine new definitions to read:

“Exempt commercial purchaser” means any person purchasing commercial insurance which, at the time of placement, employs or retains a qualified risk manager to negotiate insurance coverage; and has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding twelve months. The person shall possess a net worth in excess of \$20,000,000; generate annual revenues in excess of \$50,000,000; employ more than five hundred full-time or full-time equivalent employees per individual insured or be a member of an affiliated group employing more than 1,000 employees in the aggregate; be a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000; or be a municipality with a population in excess of 50,000 persons. Effective January 1, 2015, and every five years thereafter, the amount of net worth, annual revenues, and budgeted expenditures shall be adjusted to reflect the percentage change for that five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the federal Department of Labor.

“Home state” means, with respect to an insured, the state in which an insured maintains the insured’s principal place of business or, in the case of an individual, the state in which the individual maintains the individual’s principal residence; provided that if one hundred per cent of the insured risk is located out of the state where the insured maintains the insured’s principal place of business or the state where the individual maintains the principal residence, the home state shall be the state where the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

“Home state of affiliated group” means the home state of the member of the affiliated group that has the largest percentage of premium attributed to it under an insurance contract that has more than one insured from the affiliated group listed as named insureds on a single unauthorized insurance contract.

“Home state of group insurance” means the home state of the group policyholder who pays one hundred per cent of the premium from the policyholder’s own funds. When the group policyholder does not pay one hundred per cent of the premium from the policyholder’s own funds, the term “home state of group insurance” means the home state of the group member.

“Independently procured insurance” means insurance obtained by an insured directly from an unauthorized insurer as permitted by the laws of the insured’s home state.

“Multi-state risk” means a risk covered by an unauthorized insurer with insured exposures in more than one state.

“Principal place of business” means, with respect to determining the home state of the insured:

- (1) The state where the insured maintains the insured’s headquarters and where the insured’s high-level officers direct, control, and coordinate the business activities;

(2) If the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or

(3) If the insured maintains the insured's headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

"Principal residence" means, with respect to determining the home state of the individual insured:

(1) The state where the individual insured resides for the greatest number of days during a calendar year; or

(2) If the insured's principal residence is located outside any state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

"Single state risk" means a risk with insured exposures in only one state."

2. By amending the definitions of "authorized insurer", "surplus lines insurance", and "unauthorized insurer" to read:

"Authorized insurer" means an insurer holding a valid certificate of authority to transact an insurance business in [this State.] the state in which the subject resident is located or in which the insurance contract will be performed.

"Surplus lines insurance" means any property and casualty insurance on risks [resident, located or to be performed in this State.] procured from or placed with an unauthorized insurer under the laws of the insured's home state. Surplus lines insurance, when this State is the home state of the insured, shall be in accordance with part III of this article.

"Unauthorized insurer" means an insurer not holding a valid certificate of authority to transact an insurance business in [this State.] the state in which the subject resident is located or in which the insurance contract will be performed."

SECTION 6. Section 431:8-201, Hawaii Revised Statutes, is amended to read as follows:

"§431:8-201 Transacting insurance business without certificate of authority prohibited. It shall be unlawful for any insurer to transact an insurance business in this State, as defined in section 431:1-215, without a certificate of authority~~[-except];~~ provided that this section shall not apply to:

- (1) The lawful transaction of surplus lines insurance;
- (2) The lawful transaction of reinsurance by insurers;
- (3) Transactions in this State involving a policy lawfully solicited, written, and delivered outside of this State covering only subjects of insurance not resident, located, or expressly to be performed in this State at the time of issuance, and ~~[which transactions are]~~ subsequent to the issuance of ~~[such]~~ the policy;
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
- (5) Transactions in this State involving group life and group accident and health or sickness or blanket accident and health or sickness insurance or group annuities where the master policy of ~~[such]~~ the groups was lawfully issued in and delivered ~~[in and]~~ pursuant to the laws of a state in which the insurer was authorized to do an insurance business;

- (6) Transactions in this State involving any policy of insurance or annuity contract issued prior to July 1, 1988; ~~and~~
- (7) Transactions in this State involving ocean marine insurance~~[-]; and~~
- (8) Transactions of contracts of insurance for property and casualty multi-state risks; provided that the producer is licensed to sell, solicit, or negotiate that insurance in the home state of the insured.

SECTION 7. Section 431:8-205, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Each insured who in this State, before July 1, 2011, procures ~~or~~, continues, or renews surplus lines insurance ~~[with an unauthorized insurer]~~ on a risk located or to be performed in whole ~~or in part~~ in this State, other than insurance procured through a surplus lines broker pursuant to part III of this article shall~~[-]~~ file within sixty days after the date the insurance was ~~[so]~~ procured, continued, or renewed, ~~[file]~~ a written report ~~[of the same]~~ with the commissioner~~[-, upon forms prescribed by the commissioner, showing:]~~. Each insured who in this State, after June 30, 2011, procures, continues, or renews surplus lines insurance for which this State is the home state of the insured, other than insurance procured through a surplus lines broker pursuant to part III of this article shall file within forty-five days after the end of the calendar quarter in which the insurance was procured, continued, or renewed, a written report with the commissioner. The report shall be on forms prescribed by the commissioner, showing:

- (1) The name and address of the insured or insureds;
- (2) The name and address of the insurer;
- (3) The subject of the insurance;
- (4) A general description of the coverage;
- (5) The itemized amount of [premium] premiums, taxes, and fees currently charged [therefor; and] for each state;
- (6) The policy number, effective date of the policy, and home state of the insured; and
- (7) ~~[Such]~~ Other additional, pertinent information ~~[as is reasonably]~~ requested by the commissioner.

(c) Gross premiums charged for the surplus lines insurance~~[-]~~ allocable to this State, less any return premiums, are subject to a tax at the rate of 4.68 per cent. At the time of filing the report required in subsection (b)~~[-]~~ for insurance procured, continued, or renewed before July 1, 2011, the insured shall pay the tax to the commissioner. At the time of filing the report required in subsection (b) for insurance procured, continued, or renewed after June 30, 2011, if this State is the home state of the insured, the insured shall pay the tax and fees of this State and all other states to the director of finance, through the commissioner. If this State is not the home state of the insured, the insured shall pay the tax and fees of this State to the home state of the insured.

As used in this subsection, “gross premiums” ~~[mean]~~ means the amount of the policy or coverage premium charged by the insurer in consideration for the insurance contract. Any charges for policy, survey, inspection, service, or similar fees or other charges added by the broker shall not be considered part of gross premiums.”

SECTION 8. Section 431:8-301, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-301 Insurance placed with unauthorized insurer permitted. (a) In addition to section 431:8-205, insurance may be procured from an unauthorized insurer; provided[~~;~~] that:

- (1) The insurance is procured through a [~~licensed~~] surplus lines broker[~~;~~] licensed in the insured's home state;
- (2) The full amount or kind of insurance cannot be obtained from insurers who are authorized to do business in this State; provided that a diligent search is made among the insurers who are authorized to transact and are actually writing the particular kind and class of insurance in this State each time [~~such~~] the insurance is placed or renewed;
- (3) The surplus lines insurance procured is in addition to or in excess of the amount and coverage which can be procured from the authorized insurers; and
- (4) The insurance is not procured at a rate lower than the lowest rate [~~which~~] that is generally acceptable to authorized insurers transacting that kind of business and providing insurance affording substantially the same protection.

(b) A surplus lines broker is not required to make a due diligence search to determine whether the full amount or type of insurance can be obtained from authorized insurers when the broker is seeking to procure or place unauthorized insurance for an exempt commercial purchaser; provided that:

- (1) The broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the admitted market which may provide greater protection with more regulatory oversight; and
- (2) The exempt commercial purchaser has subsequently requested in writing for the broker to procure or place the insurance from an unauthorized insurer.”

SECTION 9. Section 431:8-302, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-302 Surplus lines [~~in solvent~~] insurers. (a) No surplus lines broker shall, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance with a financially unsound [~~insurers~~] insurer or with [~~insurers~~] an insurer engaging in an unfair [~~practices.~~] practice.

~~[(b) Before placing insurance with any unauthorized insurer, the broker shall ascertain the financial condition of the insurer and:~~

- (1) ~~In the case of a foreign insurer, shall maintain in the broker's office a current certificate, in proper form, from the regulatory authority in the domicile of the unauthorized insurer, to the effect that the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which equals the minimum capital and surplus requirements of this State for that kind of insurer as set out in article 3; or~~
- (2) ~~In the case of an alien insurer, shall maintain in the broker's office evidence of the financial responsibility of the insurer. Evidence satisfactory to the commissioner that the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System in an amount not less than \$5,400,000 for the protection of all its policyholders in the United States consisting of cash, securities, letters of credit, or of~~

investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of authorized insurers writing like kinds of insurance in this State, shall constitute prima facie evidence of responsibility.

Upon request by the commissioner, the broker shall immediately submit to the commissioner the items described in this subsection:

(c) The requirements of this section may be satisfied by an insurer possessing less than the capital and surplus set forth in subsection (b) upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of parent company, company underwriting profit and investment income trends, and company record and reputation within the industry. In no event shall the commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$500,000.]

(b) A surplus lines broker may place surplus lines insurance only with insurers who are authorized to write that type of insurance in the insurer's domiciliary state.

(c) A surplus lines broker shall not place coverage with an unauthorized insurer unless, at the time of placement, the surplus lines broker has determined that:

(1)¹ The unauthorized insurer has capital and surplus or its equivalent under the laws of its domiciliary state that equal the greater of the minimum capital requirement of this State or a minimum of \$15,000,000; provided that:

(A) Minimum capital requirements may be satisfied by the insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner;

(B) A finding of acceptability pursuant to subparagraph (A) shall be based upon factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry; and

(C) The commissioner shall not make an affirmative finding of acceptability pursuant to subparagraph (A) if the unauthorized insurer's capital and surplus is less than \$4,500,000; or

(2) For an insurer not domiciled in the United States or its territories, the insurer shall be listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners International Insurers Department; provided that:

(A) If an alien insurer is not in the Quarterly Listing of Alien Insurers, the surplus lines broker shall maintain in the broker's office evidence of the financial responsibility of the insurer; and

(B) Evidence satisfactory to the commissioner that the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System in an amount of not less than \$5,400,000 consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of authorized insurers writing like kinds of insurance in this State, for the protection of all its policyholders in the United States, shall constitute prima facie evidence of the financial responsibility of the insurer.

(d) The commissioner is authorized to enter into a cooperative agreement or interstate agreement or compact to establish additional and alternative nationwide uniform eligibility requirements that shall be applicable to unauthorized insurers domiciled in another state.

SECTION 10. Section 431:8-305, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon placing surplus lines insurance, the surplus lines broker shall as soon as reasonably possible deliver to the insured the policy[~~;~~] or, if the policy is not available, the surplus lines broker’s certificate, cover note, binder, or other evidence of insurance. Any confirmation of insurance shall be executed by the surplus lines broker and shall show ~~[the following]:~~

- (1) ~~The policy number, effective date, home state, and a description and location of the subject of the insurance[~~;~~];~~
- (2) A general description of the coverages, including any material limitations other than those in standard forms[~~;~~];
- (3) The premium and rate charged, itemized by each state;
- (4) The taxes and fees to be collected from the insured, itemized by each state;
- (5) The name and address of the insured[~~;~~];
- (6) The name and address of the insurer[~~;~~];
- (7) If the direct risk is assumed by more than one insurer, the certificate shall state the name and address and proportion of the entire direct risk assumed by each insurer[~~;~~]; and
- (8) The name of the surplus lines broker and such broker’s license number.”

SECTION 11. Section 431:8-312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each licensed surplus lines broker shall keep in the broker’s office in this State a full and true record of each surplus lines contract placed by the broker including a copy of the policy, certificate, cover note, or other evidence of insurance ~~[showing such of the following items as may be]~~ including, as applicable:

- (1) Amount of the insurance and perils insured;
- (2) Brief description of the property insured and its location;
- (3) Gross premium, taxes, and fees charged[~~;~~], itemized by each state;
- (4) Any return premium, taxes, and fees paid[~~;~~], itemized by each state;
- (5) Rate of premium charged upon the several items of property;
- (6) Effective date of the contract[~~;~~] and ~~[the] its~~ terms ~~[thereof];~~
- (7) Name ~~[and],~~ address, and home state of the insured;
- (8) Name and address of the insurer;
- (9) Amount of tax and other sums to be collected from the insured[~~;~~], itemized by each state; and
- (10) Any additional information required by the commissioner.”

SECTION 12. Section 431:8-313, Hawaii Revised Statutes, is amended to read as follows:

“**§431:8-313 Surplus lines broker’s [annual statement] reports to commissioner.** (a) Each surplus lines broker shall file with the commissioner on or before March 15 ~~[of each year], 2011,~~ a verified statement of all surplus lines insurance transacted during ~~[the preceding calendar year.] 2010.~~ Each surplus lines broker shall file with the commissioner on or before September 15, 2011, a

verified statement of all surplus lines insurance transacted after December 31, 2010, and before July 1, 2011. After June 30, 2011, each surplus lines broker shall file with the commissioner within forty-five days of the end of each calendar quarter a verified statement of all surplus lines insurance transacted during the calendar quarter as follows:

- (1) The statement for the quarter ending March 31 shall be filed on or before May 15;
 - (2) The statement for the quarter ending June 30 shall be filed on or before August 15;
 - (3) The statement for the quarter ending September 30 shall be filed on or before November 15; and
 - (4) The statement for the quarter ending December 31 shall be filed on or before February 15.
- (b) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:
- (1) Gross amount of premiums for each kind of insurance transacted;
 - (2) Aggregate gross premiums charged[;], itemized by each state;
 - (3) Aggregate of returned premiums paid to insureds[;], itemized by each state;
 - (4) Aggregate of net premiums[;] and fees, itemized by each state;
 - (5) Amount of aggregate [tax] remitted[;] taxes and fees, itemized by each state; and
 - (6) Additional information as required by the commissioner.”

SECTION 13. Section 431:8-315, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-315 Tax on surplus lines. (a) On or before March 15, [of each year,] 2011, each surplus lines broker shall pay to the director of finance, through the commissioner, a premium tax on surplus lines insurance transacted by the broker during [the preceding calendar year,] 2010. On or before September 15, 2011, each surplus lines broker shall pay to the director of finance, through the commissioner, a premium tax on surplus lines insurance transacted by the broker after December 31, 2010, and before July 1, 2011. After June 30, 2011, within forty-five days after the end of each calendar quarter, each surplus lines broker shall pay to the director of finance, through the commissioner, a premium tax on surplus lines insurance transacted by the broker during the calendar quarter for insurance for which this State is the home state of the insured. The tax rate shall be in the amount of 4.68 per cent of gross premiums, less return premiums, on [taxable] surplus lines insurance[-] allocated to this State. The tax rate and fees of other states shall be applied to the gross premiums, less return premiums, allocated to those states.

(b) The commissioner shall collect the taxes and fees on independently procured surplus lines insurance and from surplus lines licensees and disburse to the other states the funds earned by each state; provided that the other state has a reciprocal allocation and disbursement procedure for the benefit of this State. To the extent that other states, where portions of the properties, risks, or exposures reside, have failed to establish a reciprocal allocation and disbursement procedure with this State, the net premium tax collected shall be retained by this State.

As used in this subsection, “gross premiums” [mean] means the amount of the policy or coverage premium charged by the insurer in consideration for the insurance contract. Any charges for policy, survey, inspection, service, or

similar fees or other charges added by the broker shall not be considered part of gross premiums.

~~[(b)]~~ (c) If a surplus lines policy covers risks or exposures only partially resident in this State, the tax ~~[sø]~~ payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this State. The taxes and fees payable to this State on policies that cover risks and exposures only partially resident in this State shall be remitted on the quarterly schedule established by subsection (a) to the home state of the insured for disbursement to this State.

~~[(e)]~~ (d) The tax on any portion of the premium unearned at the termination of the insurance contract shall be returned to the policyholder.

(e) The commissioner may:

- (1) Enter into a cooperative agreement, reciprocal agreement, or compact with other states to facilitate and provide for the collection, allocation, and disbursement of premium taxes attributable to the placement of surplus lines insurance;
- (2) Provide for uniform methods of allocation and reporting among surplus lines insurance risk classifications;
- (3) Conform to the requirements of the federal Nonadmitted and Reinsurance Reform Act of 2010;
- (4) Share information among states relating to surplus lines insurance premium taxes; and
- (5) Utilize a method adopted in cooperation with other states to allocate risk and compute the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures are located.

The commissioner shall assess the insured for the cost of the cooperative agreement, reciprocal agreement, or compact to collect and distribute the premium taxes. Upon application of the insured, the commissioner shall refund the insured for excess payments of taxes received by the State that are the result of the statewide tax rate.”

SECTION 14. Section 431:8-316, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-316 Penalty for failure to file statement or remit tax. (a) If any surplus lines broker fails to:

- (1) File ~~[an annual statement;]~~ statements required by section 431:8-313; or
- (2) Pay the premium tax required by section 431:8-315 when the tax is due,

the surplus lines broker may be liable for a fine of up to \$25 for each day of delinquency.

(b) The commissioner may:

- (1) Collect the premium tax required by section 431:8-315 by distraint;
- (2) Recover the premium tax required by section 431:8-315 and fine for failure to pay the premium tax by instituting an action in any court of competent jurisdiction; or
- (3) Recover the fine for failure to file the ~~[annual statement]~~ statements required by section 431:8-313 by instituting an action in any court of competent jurisdiction.”

SECTION 15. Section 431:8-317, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may suspend, revoke, or refuse to extend any surplus lines broker’s license for any cause specified in any other provision of this chapter, or for any of the following causes:

- (1) Failure to file ~~[the annual statement]~~ statements required by section 431:8-313 or to pay the tax required by section 431:8-315;
- (2) Failure to keep records or to allow the commissioner to examine the surplus lines broker’s records as provided in this article;
- (3) Removal of office accounts and records from this State during the period in which the accounts are required to be maintained under this article;
- (4) Any of the causes for which a producer’s license may be suspended or revoked under article 9A;
- (5) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (6) ~~[If the licensee wilfully violates or knowingly participates]~~ Wilful violation or knowing participation in the violation of any provision of this code;
- (7) ~~[If the licensee has obtained or attempted]~~ Obtaining or attempting to obtain ~~[the]~~ a license under this chapter through wilful misrepresentation or fraud, or ~~[has failed]~~ failure to pass any examination required by section 431:9A-105;
- (8) ~~[If the licensee has misappropriated, converted]~~ Misappropriation, conversion to the licensee’s own use, or illegally ~~[withheld]~~ withholding moneys required to be held in a fiduciary capacity;
- (9) ~~[If the licensee, with intent to deceive, has materially misrepresented]~~ Material misrepresentation with intent to deceive of the terms or effect of any insurance contract, or ~~[has engaged or is about]~~ engagement or intent to engage in any fraudulent transaction;
- (10) ~~[If the licensee has been guilty]~~ Commission of any unfair practice or fraud as defined in article 13;
- (11) ~~[If in the conduct of the licensee’s affairs under the license, the licensee has been a source of]~~ Conduct of affairs under a license issued pursuant to this chapter in a manner that causes injury and loss to the public;
- (12) ~~[If the licensee issues or purports to issue]~~ The issuance or purported issuance of any binder as to any insurer named ~~[therein as to which]~~ in the binder if the licensee is not [then] authorized [so] to bind[;] the insurer; or
- (13) ~~[If the licensee has dealt with, or attempted to deal with,]~~ Dealing or attempting to deal with insurance or ~~[to exercise]~~ exercising powers relative to insurance outside the scope of the licensee’s licenses.”

SECTION 16. The insurance commissioner shall submit recommendations for legislation pertaining to and enabling the insurance commissioner to participate fully in the multi-state cooperative agreement, interstate agreement, reciprocal agreement, or compact for the collection and distribution of surplus lines insurance premium taxes and fees created pursuant to the Nonadmitted and Reinsurance Reform Act of 2010 to the legislature no later than twenty days prior to the convening of the regular session of 2012.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect on June 1, 2011.

(Approved May 26, 2011.)

Note

1. So in original.

ACT 69

S.B. NO. 1347

A Bill for an Act Relating to the Public Utilities Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§269- Electronic copies of documents. (a) No later than July 1, 2011, the public utilities commission shall accept from any person who submits a document to the commission the original and one electronic copy of each application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter and the consumer advocate shall accept service of one paper copy and one electronic copy of each application, complaint, pleading, brief, or other document filed with the commission.

(b) The commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. Until the final adoption by the commission of rules governing the electronic filing of documents with the commission, the following requirements shall apply to all documents submitted to the commission pursuant to this section; provided that additional requirements with regard to document format may be established by the commission through written guidelines:

- (1) Unless otherwise required by this chapter or the rules or guidelines of the commission, each person who submits or files an application, complaint, pleading, brief, or other document shall submit to or file with the commission an original and one electronic copy of each document and shall serve one paper copy and one electronic copy of each document on the consumer advocate;
- (2) All paper documents submitted to or filed with the commission shall be printed on one side of the page only and, if practicable, in portrait orientation;
- (3) Original paper documents submitted to or filed with the commission shall not be stapled but shall be clipped together or placed in a clearly marked three-ring binder, as appropriate;
- (4) All paper documents filed or submitted to the commission shall include appropriately labeled separator pages in addition to tabbed dividers, as applicable;
- (5) All confidential documents filed under confidential seal shall be clearly designated in accordance with the requirements of any applicable protective order, and the sealed envelope in which the confidential documents are enclosed shall clearly indicate the appropriate docket number and subject;
- (6) Electronic documents shall be submitted on a clearly marked compact disk and shall be in portable document format saved in separate files corresponding to the original paper document submission; provided that electronic documents submitted under confidential seal shall be submitted on a separate compact disk, clearly marked as confidential and indicating the appropriate docket number and subject; and
- (7) Electronic documents shall be named using the filing party's name, docket number, date of filing, and name of document as part of the document title.

Upon final adoption of rules pursuant to chapter 91, the rules of the commission governing submission or filing of electronic documents shall supersede the provisions of this subsection.

(c) No later than July 1, 2013, the public utilities commission shall accept any application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter as either a paper document or an electronic document.

(d) If a signature is required on any document submitted electronically pursuant to this section, that requirement shall be satisfied by the inclusion of an electronic signature. Chapter 489E shall apply to all electronic documents submitted pursuant to this section.”

SECTION 2. Chapter 271, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§271- **Electronic copies of documents.** (a) No later than July 1, 2011, the public utilities commission shall accept from any person who submits a document to the commission the original and one electronic copy of each application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter and the consumer advocate shall accept service of one paper copy and one electronic copy of each application, complaint, pleading, brief, or other document filed with the commission.

(b) The commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. Until the final adoption by the commission of rules governing the electronic filing of documents with the commission, the following requirements shall apply to all documents submitted to the commission pursuant to this section; provided that additional requirements with regard to document format may be established by the commission through written guidelines:

- (1) Unless otherwise required by this chapter or the rules or guidelines of the commission, each person who submits or files an application, complaint, pleading, brief, or other document shall submit to or file with the commission an original and one electronic copy of each document and shall serve one paper copy and one electronic copy of each document on the consumer advocate;
- (2) All paper documents submitted to or filed with the commission shall be printed on one side of the page only and, if practicable, in portrait orientation;
- (3) Original paper documents submitted to or filed with the commission shall not be stapled but shall be clipped together or placed in a clearly marked three-ring binder, as appropriate;
- (4) All paper documents filed or submitted to the commission shall include appropriately labeled separator pages in addition to tabbed dividers, as applicable;
- (5) All confidential documents filed under confidential seal shall be clearly designated in accordance with the requirements of any applicable protective order, and the sealed envelope in which the confidential documents are enclosed shall clearly indicate the appropriate docket number and subject;
- (6) Electronic documents shall be submitted on a clearly marked compact disk and shall be in portable document format saved in separate files corresponding to the original paper document submission; provided that electronic documents submitted under confidential seal shall be submitted on a separate compact disk, clearly marked

as confidential and indicating the appropriate docket number and subject; and

- (7) Electronic documents shall be named using the filing party's name, docket number, date of filing, and name of document as part of the document title.

Upon final adoption of rules pursuant to chapter 91, the rules of the commission governing submission or filing of electronic documents shall supersede the provisions of this subsection.

(c) No later than July 1, 2013, the public utilities commission shall accept any application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter as either a paper document or an electronic document.

(d) If a signature is required on any document submitted electronically pursuant to this section, that requirement shall be satisfied by the inclusion of an electronic signature. Chapter 489E shall apply to all electronic documents submitted pursuant to this section."

SECTION 3. Chapter 271G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§271G- Electronic copies of documents. (a) No later than July 1, 2011, the public utilities commission shall accept from any person who submits a document to the commission the original and one electronic copy of each application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter and the consumer advocate shall accept service of one paper copy and one electronic copy of each application, complaint, pleading, brief, or other document filed with the commission.

(b) The commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. Until the final adoption by the commission of rules governing the electronic filing of documents with the commission, the following requirements shall apply to all documents submitted to the commission pursuant to this section; provided that additional requirements with regard to document format may be established by the commission through written guidelines:

- (1) Unless otherwise required by this chapter or the rules or guidelines of the commission, each person who submits or files an application, complaint, pleading, brief, or other document shall submit to or file with the commission an original and one electronic copy of each document and shall serve one paper copy and one electronic copy of each document on the consumer advocate;
- (2) All paper documents submitted to or filed with the commission shall be printed on one side of the page only and, if practicable, in portrait orientation;
- (3) Original paper documents submitted to or filed with the commission shall not be stapled but shall be clipped together or placed in a clearly marked three-ring binder, as appropriate;
- (4) All paper documents filed or submitted to the commission shall include appropriately labeled separator pages in addition to tabbed dividers, as applicable;
- (5) All confidential documents filed under confidential seal shall be clearly designated in accordance with the requirements of any applicable protective order, and the sealed envelope in which the confidential documents are enclosed shall clearly indicate the appropriate docket number and subject;

- (6) Electronic documents shall be submitted on a clearly marked compact disk and shall be in portable document format saved in separate files corresponding to the original paper document submission; provided that electronic documents submitted under confidential seal shall be submitted on a separate compact disk, clearly marked as confidential and indicating the appropriate docket number and subject; and
- (7) Electronic documents shall be named using the filing party's name, docket number, date of filing, and name of document as part of the document title.

Upon final adoption of rules pursuant to chapter 91, the rules of the commission governing submission or filing of electronic documents shall supersede the provisions of this subsection.

(c) No later than July 1, 2013, the public utilities commission shall accept any application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter as either a paper document or an electronic document.

(d) If a signature is required on any document submitted electronically pursuant to this section, that requirement shall be satisfied by the inclusion of an electronic signature. Chapter 489E shall apply to all electronic documents submitted pursuant to this section."

SECTION 4. Section 269-93, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§269-93 Achieving portfolio standard.[H]~~ (a) An electric utility company and its electric utility affiliates may aggregate their renewable portfolios [~~to~~ ~~order~~] to achieve the renewable portfolio standard.

(b) If an electric utility company and its electric utility affiliates aggregate their renewable portfolios to achieve the renewable portfolio standard, the public utilities commission may distribute, apportion, or allocate the costs and expenses of all or any portion of the respective renewable portfolios among the electric utility company, its electric utility affiliates, and their respective ratepayers, as is reasonable under the circumstances.

(c) An electric utility company may recover, through an automatic rate adjustment clause, the electric utility company's revenue requirement resulting from the distribution, apportionment, or allocation of the costs and expenses of the renewable portfolios of the electric utility company and its electric utility affiliates.

(d) To provide for timely recovery of the revenue requirement under subsection (c), the commission may establish a separate automatic rate adjustment clause, or approve the use of a previously approved automatic rate adjustment clause, without a rate case filing. The use of the automatic rate adjustment clause to recover the revenue requirement shall be allowed to continue until the revenue requirement is incorporated in rates in the respective electric utility company's rate case."

SECTION 5. The public utilities commission shall submit a report to the legislature no later than twenty days prior to the convening of the 2012 regular session on the commission's progress in implementing electronic filing of any and all documents required to be submitted to or filed with the commission. The report required by this section shall include information on the public utilities commission's comprehensive plan to accept electronic filings, a list of hardware and software required for the public utilities commission to comply with the

requirements of this Act by July 1, 2013, current funds allocated for the acceptance of electronic documents, requirements for additional funding including a detailed budget request and recommendations for a document surcharge if necessary to fully implement the requirements of this Act, and recommendations for further legislation if necessary to implement the findings and plan to accept electronic filing contained in the report.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved May 27, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 70

S.B. NO. 883

A Bill for an Act Relating to Special Number Plates.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 249-9.2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance shall provide, for a fee, one set of special number plates upon the receipt of an application together with:

- (1) Specific proof that the applicant was awarded the Purple Heart by the United States Department of Defense for wounds received in military or naval combat against an armed enemy of the United States;
- (2) Certification that the applicant is a veteran;
- (3) Specific proof that the applicant was serving the United States in the military or as a civilian, on Oahu, or offshore at a distance of not more than three miles at the time of the December 7, 1941, attack on Pearl Harbor. Certification from the Hawaii state chairperson of the Pearl Harbor Survivors Association shall constitute sufficient proof;
- (4) Specific proof that the applicant was confined as a prisoner of war while providing military service to the United States; [or]
- (5) Certification from the United States Department of Veterans Affairs or the state office of veterans' services that the applicant is a combat veteran or a veteran of the Vietnam conflict, the Korean conflict, World War II, or the Persian Gulf conflict; or
- (6) Specific proof that the applicant would qualify for a gold star lapel button under the criteria established by Title 10 United States Code Section 1126; provided that the applicant shall not be disqualified for the special number plates because the applicant is the grandparent of the deceased member of the United States armed forces;

provided that applicants, except civilian applicants under paragraph (3)[5] and civilian applicants and applicants who are currently serving the United States

in the military under paragraph (6), shall also provide a copy of the applicant's most recent discharge paper or separation document that indicates an honorable discharge or general (under honorable conditions) discharge from active duty.

- (b) The design of the plates for:
- (1) Purple heart recipients shall include the words "COMBAT WOUNDED";
 - (2) Veterans shall include the word "VETERAN";
 - (3) Pearl Harbor survivors shall include the words "PEARL HARBOR SURVIVOR";
 - (4) Former prisoners of war shall include the words "FORMER PRISONER OF WAR";
 - (5) Combat veterans shall include the words "COMBAT VETERAN";
 - (6) Veterans of the Vietnam conflict shall include the words "VIETNAM VETERAN";
 - (7) Veterans of the Korean conflict shall include the words "KOREA VETERAN";
 - (8) Veterans of World War II shall include the words "WORLD WAR II VETERAN"; ~~and~~
 - (9) Veterans of the Persian Gulf conflict shall include the words "PERSIAN GULF VETERAN"~~[-]; and~~
 - (10) Gold star family members, including grandparents, shall include the words "GOLD STAR FAMILY".

These designations shall be imprinted on the left side of the license plates in a manner similar to congressional and honorary consul license plates."

SECTION 2. The director of finance of the city and county of Honolulu shall provide the "GOLD STAR FAMILY" special number plates described in section 1 of this Act no later than October 1, 2011.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2011.)

ACT 71

H.B. NO. 49

A Bill for an Act Relating to Armed Forces Service Members.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 338, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§338- Disposition of body; armed forces service members. The person designated by the decedent as authorized to direct disposition on a United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, may arrange for the final disposition of the decedent's body, including cremation, if the decedent:

- (1) Died while serving in any branch of the United States armed forces, United States reserve forces, or national guard; and

- (2) Executed the United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 72

H.B. NO. 1088

A Bill for an Act Relating to Corrections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to authorize the department of public safety to render necessary medical and mental health treatment to inmates and detainees in its custody in an efficient and quicker fashion when those inmates or detainees refuse treatment.

SECTION 2. Chapter 353, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“**§353-A Involuntary medical treatment criteria.** An inmate or detainee in the custody of the department may be ordered to receive involuntary medical treatment, including the taking or application of medication, if the court finds that:

- (1) The inmate or detainee poses a danger of physical harm to self or others;
- (2) Treatment with medication is medically appropriate; and
- (3) Considering less intrusive alternatives, treatment is essential to forestall the danger posed by the inmate or detainee.

§353-B Initiation of proceeding for involuntary medical treatment. (a) The director, or the director’s designee, may file a petition for involuntary medical treatment alleging that a person in the custody of the department meets the criteria for involuntary medical treatment under section 353-A. The petition shall be executed subject to the penalties of perjury but need not be sworn to before a notary public and shall be filed in the circuit court of the circuit wherein the person who is the subject of the petition is in custody. The attorney general, the attorney general’s deputy, special deputy, or appointee designated to present the case shall assist the petitioner to state the substance of the petition in plain and simple language. The petition may be accompanied by an affidavit of the licensed physician or psychologist who has examined the person within two days prior to submission of the petition, unless the person whose treatment is sought has refused to submit to a medical or psychological examination, in which case the fact of refusal shall be alleged in the petition. The affidavit shall set forth the signs and symptoms relied upon by the physician or psychologist to determine whether the person is in need of treatment, whether the person is capable of realizing and making a rational decision with respect to the person’s

need for treatment, and the recommended treatment. If the petitioner believes that further evaluation is necessary before treatment, the petitioner may request such further evaluation.

(b) If the person has been given an examination, evaluation, or treatment in a psychiatric facility or by the department within five days before the filing of the petition, and treatment is recommended by the staff of the facility or the department, the petition may be accompanied by an affidavit of the department's medical director or the mental health administrator in lieu of a physician's or psychologist's affidavit.

§353-C Notice; waiver of notice; hearing on petition; waiver of hearing on petition for involuntary hospitalization. (a) The court shall set a hearing on the petition, and notice of the hearing shall be served personally on the person who is the subject of the petition, or by certified or registered mail, return receipt requested, deliverable to the addressee only; on the person's spouse, civil union partner, or reciprocal beneficiary; legal parents; adult children; and legal guardian, if one has been appointed. If the person has no living spouse, civil union partner, or reciprocal beneficiary; legal parent; adult children; or legal guardian, or if none can be found, notice of the hearing shall be served on at least one of the person's closest adult relatives if any can be found. Notice of the hearing shall also be served on the public defender, person's attorney, or other court-appointed attorney, as the case may be. If the person is a minor, notice of the hearing shall also be served upon the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition if the person can be found within the State. Notice shall also be given to the other persons as the court may designate.

(b) The notice required by subsection (a) shall include:

- (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and of possible consequences to the person who is the subject of the petition, and a statement of the legal standard upon which commitment is authorized;
- (2) A copy of the petition;
- (3) Written notice, in plain and simple language, that the person may waive the hearing by voluntarily agreeing to the care or treatment proposed;
- (4) A completed form indicating the waiver described in paragraph (3) if the person waived the hearing;
- (5) Written notice, in plain and simple language, that the person or the person's guardian or representative may apply at any time for a hearing on the issue of the person's need for care or treatment if the person has previously waived a hearing;
- (6) Notice that the person is entitled to the assistance of an attorney and that the public defender has been notified of these proceedings;
- (7) Notice that if the person does not want to be represented by the public defender, the person may contact the person's own attorney; and
- (8) Notice, if applicable, that the petitioner intends to present evidence to show that the person is an incapacitated or protected person, or both, under article V of chapter 560, and whether the appointment of a guardian is sought at the hearing. If appointment of a guardian is to be recommended, and a nominee is known at the time the petition is filed, the identity of the nominee shall be disclosed.

(c) If the person who is the subject of the petition executes and files a waiver of the hearing, then upon acceptance by the court following a court de-

termination that the person understands the person's rights and is competent to waive them, the court shall order the person to be given the care or treatment as the court deems to be proper under the circumstance.

§353-D Hearing on petition. (a) The court may adjourn or continue a hearing for failure to timely notify a spouse, civil union partner, reciprocal beneficiary, guardian, relative, or other person determined by the court to be entitled to notice, or for failure by the person who is the subject of the petition to contact an attorney as provided in section 353-C, if the court determines that an adjournment or continuance is in the interest of justice.

(b) Unless the hearing is waived, the judge shall hear the petition as soon as possible and no later than ten days after the date the petition is filed unless a reasonable delay is sought for good cause shown by the person who is the subject of the petition, the person's attorney, or those persons entitled to receive notice of the hearing under section 353-C.

(c) The person who is the subject of the petition shall be present at all hearings unless the person waives the right to be present, is unable to attend, or creates conditions that make it impossible to conduct the hearing in a reasonable manner as determined by the judge. A waiver is valid only upon acceptance by the court following a judicial determination that the person understands the person's rights and is competent to waive them, or is unable to participate. If the person is unable to participate, the judge shall appoint a guardian ad litem or a temporary guardian as provided in article V of chapter 560, to represent the person throughout the proceedings.

(d) Hearings may be held at a convenient location within the circuit where the person who is the subject of the petition resides or any other circuit deemed appropriate by the court. The person or any interested person may request a hearing in another circuit because of convenience to the parties, witnesses, or the court, or because of the person's mental or physical condition.

(e) The attorney general, the attorney general's deputy, special deputy, or appointee shall present the case for hearings convened under this section.

(f) Counsel for the person who is the subject of the petition shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to present evidence that the counsel believes necessary to a proper disposition of the proceedings.

(g) No person who is the subject of the petition shall be found to require care or treatment unless at least one physician or psychologist who has personally examined the person testifies in person at the hearing. This testimony may be waived by the person. If the subject has refused to be examined by a licensed physician or psychologist, the person may be examined by a court-appointed licensed physician or psychologist. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true, the person's refusal shall be treated as a denial that the person is mentally ill or suffering from substance abuse. Nothing in this section shall limit the person's privilege against self-incrimination.

(h) The person who is the subject of the petition in a hearing under this section has the right to secure an independent medical or psychological evaluation at the person's own expense and present evidence thereon.

(i) If the court finds that the criteria for involuntary medical treatment under section 353-A have been met by clear and convincing evidence, the court may issue an order to authorize the department to involuntarily medically treat the person for a period of up to one year unless the person is sooner released or sooner determined to no longer be in need of treatment.

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(j) The court may find that the person who is the subject of the petition is an incapacitated or protected person, or both, under article V of chapter 560, and may appoint a guardian or conservator, or both, for the person under the terms and conditions as the court shall determine.”

SECTION 3. Section 802-1, Hawaii Revised Statutes, is amended to read as follows:

“§802-1 **Right to representation by public defender or other appointed counsel.** Any indigent person who is (1) arrested for, charged with, or convicted of an offense or offenses punishable by confinement in jail or prison or for which [such] the person may be or is subject to the provisions of chapter 571; or (2) threatened by confinement, against the indigent person’s will, in any psychiatric or other mental institution or facility; or (3) the subject of a petition for involuntary outpatient treatment under chapter 334; or (4) the subject of a petition for involuntary medical treatment under chapter 353 shall be entitled to be represented by a public defender. If, however, conflicting interests exist, or if the public defender for any other reason is unable to act, or if the interests of justice require, the court may appoint other counsel.

The appearance of the public defender in all judicial proceedings shall be subject to court approval.

The appearance of a public defender in all hearings before the Hawaii paroling authority or other administrative body or agency shall be subject to the approval of the chairperson of the Hawaii paroling authority or the administrative head of the body or agency involved.”

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 73

H.B. NO. 1085

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alpha-ethyltryptamine (AET);

- (2) 2,5-dimethoxy-4-ethylamphetamine (DOET);
- (3) 2,5-dimethoxyamphetamine (2,5-DMA);
- (4) 3,4-methylenedioxy amphetamine;
- (5) 3,4-methylenedioxymethamphetamine (MDMA);
- (6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
- (7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
- (8) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (9) 4-bromo-2,5-dimethoxy-amphetamine(4-bromo-2,5-DMA);
- (10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
- (11) 3,4,5-trimethoxy amphetamine;
- (12) Bufotenine;
- (13) 4-methoxyamphetamine (PMA);
- (14) Diethyltryptamine;
- (15) Dimethyltryptamine;
- (16) 4-methyl-2,5-dimethoxy-amphetamine;
- (17) Gamma hydroxybutyrate (GHB) (some other names include gamma hydroxybutyric acid; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
- (18) Ibogaine;
- (19) Lysergic acid diethylamide;
- (20) Marijuana;
- (21) Parahexyl;
- (22) Mescaline;
- (23) Peyote;
- (24) N-ethyl-3-piperidyl benzilate;
- (25) N-methyl-3-piperidyl benzilate;
- (26) Psilocybin;
- (27) Psilocyn;
- (28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);
- (29) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:
 - (A) 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 - (B) 6 cis or trans tetrahydrocannabinol, and their optical isomers;
and
 - (C) 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered);
- (30) Ethylamine analog of phencyclidine (PCE);
- (31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- (32) Thiophene analog of phencyclidine (TPCP; TCP);
- (33) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number 96-48-0 when any such substance is intended for human ingestion;

- (34) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4- butylenes glycol; butylene glycol; 1,4-dihydroxybutane; 1,4- tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4- diol with Chemical Abstract Service number 110-63-4 when any such substance is intended for human ingestion;
- (35) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;
- (36) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;
- (37) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its optical isomers, salts, and salts of isomers;
- (38) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;
- (39) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;
- (40) *Salvia divinorum*;
- (41) Salvinorin A; [and]
- (42) Divinorin A[-];
- (43) Mephedrone (2-methylamino-1-p-tolylpropan-1-one) also known as 4-methylmethcathinone (4-MMC), methylephedrone or MMCAT;
- (44) Methylenedioxypropylvalerone (MDPV, MDPK);
- (45) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol, (another trade name is HU-210);
- (46) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, (other trade names include CP 47,497 and dimethyloctyl homologues);
- (47) 1-Pentyl-3-(1-naphthoyl)indole, (another trade name is JWH-018);
- (48) 1-Butyl-3-(1-naphthoyl)indole, (another trade name is JWH-073); and
- (49) Cannabicyclohexanol.”

SECTION 2. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage form);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alphaacetylmethadol (LAAM);
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

- (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (18) Pethidine (Meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil; ~~and~~
- (28) Tapentadol[-]; and
- (29) 4-anilino-N-phenethyl-4-piperidine (ANPP)."

SECTION 3. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Any anabolic steroid. The term "anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Clostebol (4-Chlorotestosterone);
- (3) Dehydrochloromethyltestosterone;
- (4) Dihydrotestosterone (4-dihydrotestosterone);
- (5) Drostanolone;
- (6) Ethylestrenol;
- (7) Fluoxymesterone;
- (8) Formebolone (Formyldienolone);
- (9) Mesterolone;
- (10) Methandranone;
- (11) Methandriol;
- (12) Methandrostenolone (Methandienone);
- (13) Methenolone;
- (14) Methyltestosterone;
- (15) Mibolerone;
- (16) Nandrolone;
- (17) Norethandrolone;
- (18) Oxandrolone;
- (19) Oxymesterone;
- (20) Oxymetholone;
- (21) Stanolone (Dihydrotestosterone);
- (22) Stanozolol;
- (23) Testolactone;
- (24) Testosterone;
- (25) Trenbolone;
- (26) 3[beta], 17-dihydroxy-5a-androstane;
- (27) 3[alpha], 17[beta]-dihydroxy-5a-androstane;
- (28) 5[alpha]-androstan-3, 17-dione;
- (29) 1-androstenediol (3[beta], 17[beta]-dihydroxy-5[alpha]-androst-1-ene);
- (30) 1-androstenediol (3[alpha], 17[beta]-dihydroxy-5[alpha]-androst-1-ene);
- (31) 4-androstenediol (3[beta], 17[beta]-dihydroxy-androst-4-ene);
- (32) 5-androstenediol (3[beta], 17[beta]-dihydroxy-androst-5-ene);

- (33) 1-androstenedione ([5[alpha]]-androst-1-en-3, 17-dione);
- (34) 4-androstenedione (androst-4-en-3, 17-dione);
- (35) 5-androstenedione (androst-5-en-3, 17-dione);
- (36) Bolasterone (7[alpha], 17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one);
- (37) Calusterone (7[beta], 17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one);
- (38) [Delta]1-dihydrotestosterone (a.k.a. '1-testosterone') (17[beta]-hydroxy-5[alpha]-androst-1-en-3-one);
- (39) Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostan[2,3-c]-furan);
- (40) 13[beta]-ethyl-17[beta]-hydroxygon-4-en-3-one;
- (41) 4-hydroxytestosterone (4,17[beta]-dihydroxy-androst-4-en-3-one);
- (42) 4-hydroxy-19-nortestosterone (4,17[beta]-dihydroxy-estr-4-en-3-one);
- (43) Mesterolone (1[alpha]-methyl-17[beta]-hydroxy-[5[alpha]]-androstan-3-one);
- (44) Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-dien-3-one);
- (45) Methandriol (17[alpha]-methyl-3[beta], 17[beta]-dihydroxyandrost-5-ene);
- (46) Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one);
- (47) 17[alpha]-methyl-3[beta], 17[beta]-dihydroxy-5a-androstane;
- (48) 17[alpha]-methyl-3[alpha], 17[beta]-dihydroxy-5a-androstane;
- (49) 17[alpha]-methyl-3[beta], 17[beta]-dihydroxyandrost-4-ene;
- (50) 17[alpha]-methyl-4-hydroxynandrolone (17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one);
- (51) Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9(10)-dien-3-one);
- (52) Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9-11-trien-3-one);
- (53) 17[alpha]-methyl-[Delta] 1-dihydrotestosterone (17b[beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one) (a.k.a. '17-[alpha]-methyl-1-testosterone');
- (54) 19-nor-4-androstenediol (3[beta], 17[beta]-dihydroxyestr-4-ene);
- (55) 19-nor-4-androstenediol (3[alpha], 17[beta]-dihydroxyestr-4-ene);
- (56) 19-nor-5-androstenediol (3[beta], 17[beta]-dihydroxyestr-5-ene);
- (57) 19-nor-5-androstenediol (3[alpha], 17[beta]-dihydroxyestr-5-ene);
- (58) 19-nor-4-androstenedione (estr-4-en-3, 17-dione);
- (59) 19-nor-5-androstenedione (estr-5-en-3, 17-dione);
- (60) Norbolethone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one);
- (61) Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one);
- (62) Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one);
- (63) Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one);
- (64) Tetrahydrogestrinone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4, 9, 11-trien-3-one); [and]
- (65) Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17-ol, madol);
- (66) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
- (67) Boldione (Androsta-1,4-diene-3,17-dione); and

~~[(65)]~~ (68) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth, except the term “anabolic steroid” does not include an anabolic steroid ~~[which]~~ that is expressly intended for administration through implants to cattle or other nonhuman species and ~~[which]~~ that has been approved by the Secretary of Health and Human Services for nonhuman administration. If any person prescribes, dispenses, or distributes an anabolic steroid intended for administration to nonhuman species for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.”

SECTION 4. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The designated state agency shall determine those schedules of controlled substances, classes of controlled substances, and specific controlled substances that are purportedly being misused and abused in the State. No identified controlled substances may be dispensed unless information relevant to the dispensation of the substance is reported electronically or by ~~[universal claim form]~~ means indicated by the designated state agency to the central repository established under section 329-102, in accordance with rules adopted by the department.”

SECTION 5. Section 329-102, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) All prescriptions for controlled substances in schedules II through V and other ~~[controlled]~~ substances of concern designated by the designated state agency that are processed by an out-of-state pharmacy shall conform to reporting and registration requirements adopted by the State, and to any additional rules the department adopts.”

SECTION 6. Section 329-123, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Qualifying patients shall register with the department of public safety. ~~[Such]~~ The registration shall be effective until the expiration of the certificate issued by the department and signed by the physician. Every qualifying patient shall provide sufficient identifying information to establish the personal [identity] identities of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within five working days. Every qualifying patient shall have only one primary caregiver at any given time. The department shall then issue to the qualifying patient a registration certificate, and may charge a reasonable fee not to exceed ~~[\$25.]~~ \$35.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

A Bill for an Act Relating to Prostitution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§712- Solicitation of prostitution near schools or public parks. (1) A person commits the offense of solicitation of prostitution near schools or public parks if, within seven hundred fifty feet of a school or public park, the person offers or agrees to pay a fee to another person to engage in sexual conduct.

(2) Solicitation of prostitution near schools or public parks is a misdemeanor.

(3) For purposes of this section:

“School” has the same meaning as in section 712-1249.6(6).

“Sexual conduct” has the same meaning as in section 712-1200(2).”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Certification of Principals and Vice-Principals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the department of education currently has requirements for the certification of its principals and vice-principals. The legislature also finds that the federal American Recovery and Reinvestment Act of 2009 provides educational funds for states that pursue educational reform and additional funds for those states that qualify for Race to the Top funds by advancing educational reform.

One of the selection criteria for the Race to the Top funds is providing alternative routes to certification for teachers and principals. Although the legislature previously amended section 302A-605, Hawaii Revised Statutes, to establish alternative routes to certification, the current requirement that a principal candidate possess not less than five years of appropriate school-level experience, of which at least three years shall have been as a teacher, is too restrictive and conflicts with the Race to the Top grant requirements.

The purpose of this Act is to provide principal and vice-principal candidates alternate routes of certification that meet the federal Race to the Top requirements.

SECTION 2. Section 302A-605, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Principals shall meet the department’s certification requirements and shall have at least five years of appropriate school-level experience, including at least three years as a teacher[-], or equivalent experience, as determined by the department.”

(b) Vice-principals shall meet the department’s certification requirements and shall have appropriate school-level or equivalent experience, as determined by the department.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 1, 2011.)

ACT 76

H.B. NO. 931

A Bill for an Act Relating to Small Boat Harbors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 200-9, Hawaii Revised Statutes, is amended to read as follows:

“**§200-9 Purpose and use of state small boat harbors.** (a) State small boat harbors are constructed, maintained, and operated for the purposes of:

- (1) Recreational boating activities;
- (2) Landing of fish; and
- (3) Commercial vessel activities.

[For the purpose of this section, ~~“recreational boating activities” means the utilization of watercraft for sports, hobbies, or pleasure, and “commercial vessel activities” means the utilization of vessels for activities or services provided on a fee basis.~~] To implement these purposes, only vessels in good material and operating condition that are regularly navigated beyond the confines of the small boat harbor, and which are used for recreational activities, the landing of fish, or commercial vessel activities shall be permitted to moor, anchor, or berth at such harbor or use any of its facilities.

(b) Vessels used for purposes of recreational boating activities which are also the principal habitation of the owners shall occupy no more than one hundred twenty-nine berths at Ala Wai boat harbor and thirty-five berths at Keehi boat harbor, which is equal to fifteen per cent of the respective total moorage space that was available as of July 1, 1976, at the Ala Wai and Keehi boat harbors. Notwithstanding the purposes of small boat harbors, moorage for commercial vessels and commercial vessel activities is not permitted in the Ala Wai and Keehi boat harbors; provided that commercial catamarans, for which valid permits or registration certificates have been issued by the department which allow the catamarans to operate upon Waikiki shore waters for hire, may be permitted to moor in Ala Wai boat harbor at facilities leased for commercial purposes. The department shall allow a sole proprietor of a catamaran operating with a valid commercial registration certificate issued by the department for a commercial catamaran to land its commercial catamaran on Waikiki beach and to operate upon Waikiki shore waters for hire, to transfer the ownership

of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate under the commercial registration certificate. The existing commercial registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity. No commercial registration issued to an owner of a commercial catamaran operating in the Waikiki area shall be denied or revoked without a prior hearing held in accordance with chapter 91.

(c) Notwithstanding any limitations on commercial permits for Maui county small boat facilities, vessels engaging in inter-island ferry service within Maui county shall be afforded preferential consideration for ferry landings, including the issuance of a commercial operating permit and the waiver of any applicable fees, at Maui county small boat facilities; provided that:

- (1) The vessel operator has been issued a certificate of public convenience and necessity for the purpose of engaging in inter-island ferry service that includes a route within Maui county;
- (2) The design and performance characteristics of the vessel will permit safe navigation within the harbor entrance channel and safe docking within Maui county small boat facilities;
- (3) The vessel operations will not result in unreasonable interference with the use of Maui county small boat facilities by other vessels; and
- (4) All preferential consideration and waivers, including any commercial permits issued under this section, shall cease upon the vessel operator's termination of inter-island ferry service within Maui county.

(d) The chairperson may adopt rules pursuant to chapter 91 to further implement this section.

(e) For purposes of this section:

"Commercial vessel activities" means the use of vessels for activities or services provided on a fee basis.

"Recreational boating activities" means the use of watercraft for sports, hobbies, or pleasure.

"Regularly navigated" means the movement of a vessel under its own power from its assigned mooring within a small boat harbor to beyond the confines of the small boat harbor and entrance channel at least once in a ninety-day period. Vessels moored in an offshore mooring area shall exit the confines of the designated mooring area under their own power at least once in a ninety-day period."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

A Bill for an Act Relating to Courts of Appeal.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 602-59, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) An application for a writ of certiorari may be filed with the supreme court no later than ~~ninety~~ thirty days after the filing of the judgment or dismissal order of the intermediate appellate court. Upon a written request filed prior to the expiration of the thirty-day period, a party may extend the time for filing an application for a writ of certiorari for no more than an additional thirty days. Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed. The supreme court shall determine to accept the application within thirty days after an objection is or could have been filed. The failure of the supreme court to accept within thirty days shall constitute a rejection of the application.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2012; provided that section 602-59(c), Hawaii Revised Statutes, shall apply in the form in which it read on the day before the effective date of this Act to cases where the intermediate appellate court’s judgment or dismissal order was filed before the effective date of this Act.

(Approved June 1, 2011.)

ACT 78

H.B. NO. 1082

A Bill for an Act Relating to the Conservation and Resources Enforcement Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 199, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§199- Conservation and resources enforcement special fund; established.

(a) There is hereby established in the state treasury a special fund known as the conservation and resources enforcement special fund, which shall be administered by the department.

(b) The following shall be deposited into the conservation and resources enforcement special fund:

- (1) Grants, awards, donations, gifts, transfers, or moneys derived from public or private sources for the purposes of enforcing the provisions of title 12; chapters 6D, 6E, and 6K; or any rule adopted thereunder;
- (2) Fees, reimbursements, administrative charges, and penalties collected for activities related to the enforcement of natural, cultural, and historic resources protection laws and rules, except as otherwise provided by law that provides for deposits into other special funds administered by the department;
- (3) Moneys derived from interest, dividends, or other income from the above-mentioned sources; and
- (4) Appropriations by the legislature to the special fund.

(c) The conservation and resources enforcement special fund shall be used for expenditures, including but not limited to:

- (1) Training;
- (2) Research;

- (3) Equipment;
- (4) Preparation and dissemination of information to the public;
- (5) Data collection and development;
- (6) Information technology;
- (7) Safety;
- (8) Wireless communication;
- (9) Management;
- (10) Travel;
- (11) Equipment rental;
- (12) Repairs;
- (13) Planning;
- (14) Information;
- (15) Education;
- (16) Operations;
- (17) Maintenance functions authorized and deemed necessary by the department;
- (18) Funding for consultants or contractual hires related to the enforcement of:
 - (A) Title 12;
 - (B) Chapters 6D, 6E, and 6K; or
 - (C) Any rule adopted thereunder; and
- (19) Work performed in cooperation with enforcement authorities of the State, the counties, and the federal government.

(d) The fund shall be held separate and apart from all other moneys, funds, and accounts in the department, except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the department and agencies or persons from whom the moneys are received. Any balance remaining in the fund at the end of any fiscal year shall be carried forward in the fund for the next fiscal year.

(e) As used in this section, "department" means the department of land and natural resources."

SECTION 2. There is appropriated out of the conservation and resources enforcement special fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2011-2012 for the purposes of covering expenses related to enforcing natural, cultural, and historic-resources protection laws and rules.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

ACT 79

H.B. NO. 1005

A Bill for an Act Relating to Child Support Enforcement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 576D-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Other state” includes:

- (1) All states of the United States other than the State of Hawaii;
- (2) The District of Columbia;
- (3) Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States;
- (4) Any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe and is included in the list of federally recognized Indian tribal governments as published in the Federal Register that is operating under Title IV-D; and
- (5) A foreign country or a political subdivision thereof:
 - (A) Declared to be a foreign reciprocating country under Title IV-D; or
 - (B) With which the State has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with Title IV-D.

“State” means the State of Hawaii.”

SECTION 2. Section 576D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The agency shall:

- (1) Establish a state parent locator service for the purpose of locating absent and custodial parents;
- (2) Cooperate with other states in:
 - (A) Establishing paternity, if necessary;
 - (B) Locating an absent parent who is present in the State and against whom any action is being taken under a Title IV-D program in any other state; and
 - (C) Securing compliance by an absent parent with a support order issued by a court of competent jurisdiction in ~~[another]~~ any other state;
- (3) Perform periodic checks of whether a parent is collecting unemployment compensation and, if so, to arrange, either through agreement with the parent or by bringing legal process, to have a portion of the compensation withheld, to fulfill the parent’s child support obligations;
- (4) Notify annually each custodial parent, guardian, protective payee, or other person having custody of the child of an Aid to Families with Dependent Children family of the amount of child support collected on behalf of the child in the family. For the purpose of this ~~[section,]~~ paragraph, “Aid to Families with Dependent Children family” means a family that receives financial assistance under the federal Aid to Families with Dependent Children program or its successor;
- (5) Establish and use procedures that shall require a debtor parent to give security, post bond, or give some other guarantee to secure payment of delinquent child support. The procedures shall apply to all debtor parents of children described under section 576D-3. The procedures shall include advance notice to the debtor parent in full compliance with the State’s procedural due process requirements. The agency shall develop guidelines, which are available to the public, to determine whether the case is ~~[inappropriate]~~ appropriate for application of this requirement;

- (6) Establish and use procedures by which information regarding the name of the debtor parent and the amount of delinquent child support owed by a debtor parent residing in the State will be made available to any consumer reporting agency as defined in section 603(f) of the Fair Credit Reporting Act. The procedures shall be effectuated upon the agency being authorized to provide Title IV-D services^[5] and shall include provisions ~~[on advance notice]~~ to provide to the debtor parent whose information is being reported advance notice of the procedures, which notice and procedures shall be in full compliance with the State's procedural due process requirements, to contest the accuracy of the information;
- (7) Establish and use procedures that will enforce liens against the real and personal property of a debtor parent who owes overdue support and who resides or owns property in the State. The agency shall further establish guidelines that are available to the public to determine whether the case is inappropriate for application of this paragraph;
- (8) Establish and use procedures for the notification of a custodial parent that any income tax refund setoff under section 231-53 shall be retained by the State in cases where medical support rights have been assigned to the State and the income tax refund setoff is applied to amounts designated in the child support order for medical purposes;
- (9) Establish and use procedures for prompt ~~[reimbursements of overpayments]~~ reimbursement of overpayment of child support debts from income tax refund setoffs under section 231-53. The procedures shall provide for the ~~[reimbursements]~~ reimbursement to be made by the custodial parent or agency;
- (10) Establish and use procedures for periodic review and modification of child support orders in accordance with Title IV-D;
- (11) Provide notice not less than once every three years to those parents subject to an order of support informing the parents of their right to request the agency to review and, if appropriate, adjust the order of support pursuant to the guidelines established under section 576D-7;
- (12) Establish and operate a state case registry that contains records of:
 - (A) Each case in which services are being provided by the agency under the state plan; and
 - (B) Each support order established or modified in the State on or after October 1, 1998.

The records shall use standardized data elements for both parents, including but not limited to names, residential and mailing addresses, telephone numbers, driver's license numbers, ~~[names, addresses, and telephone number of the party's employer,]~~ social security numbers and other uniform identification numbers, dates of birth, ~~[and]~~ case identification numbers, and the names, addresses, and telephone numbers of the parents' employers, and contain any other information as required by the United States Secretary of Health and Human Services. In each case, with respect to subparagraph (A) and where a support order has been established, the case record shall include the amount of monthly or other periodic support owed under the order, and other amounts, including but not limited to arrearages, due under the order, the amounts collected under the order, the birthdate of any child for whom the order requires the provision of support, and the amount of any lien imposed;

- (13) Perform other duties required under chapter 576B, the Uniform Interstate Family Support Act; and
- (14) Perform other duties required under Title IV-D.”

SECTION 3. Section 576D-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Other than for child support payments disbursed to the department of human services or to ~~[another]~~ any other state or agency administering a program under Title IV-D ~~[of the federal Social Security Act]~~, the custodial parent shall elect to receive child support payments from the agency by means of an electronic benefits transfer system or by directly depositing the amount into an account designated by the custodial parent. If an election is not made, the agency shall determine whether the disbursement of child support payments shall be by means of an electronic benefits transfer system or by an alternate method of disbursement that complies with the time frame required under Title IV-D ~~[of the federal Social Security Act]~~.”

SECTION 4. Section 576D-10.5, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) A lien shall be enforceable by the child support enforcement agency or its designated counsel, by the obligee, or by ~~[another]~~ any other state or agency administering a program under Title IV-D ~~[of the federal Social Security Act]~~, in the following manner:

- (1) By suit in the appropriate court;
- (2) By bringing an action in an administrative tribunal;
- (3) By filing and serving a notice of child support lien; or
- (4) By any lawful means of collection.

A notice of child support lien shall state the name and the last four digits only of the social security number ~~[i, if available]~~, of the obligor, the child support enforcement case number, the amount of the lien and the through date ~~[i, if applicable]~~, the accruing monthly amount, and the date on which the order or judgment regarding child support or public assistance debt was recorded with the bureau of conveyances. The notice shall require that whoever is served with a notice of child support lien either satisfy the lien or obtain a release of the lien prior to disbursing any funds to the obligor. The method of service of a notice of child support lien shall be by certified mail, return receipt requested, or by personal delivery to the individual or entity referred to. A copy of the notice of child support lien shall also be sent to the obligor by regular mail at the obligor's last known address. Upon service of a notice of child support lien, the individual or entity served shall withhold the amount of the lien from the proceeds of any estate, judgment, settlement, compromise, vacation or holiday pay, or other benefits due the obligor and deliver the funds to the child support enforcement agency. For service effectuated by certified mail, an electronic copy or facsimile of the signature of the served individual or entity on certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual or entity. A notice of child support lien may be amended from time to time until extinguished or released, each amendment taking effect upon proper service. A notice of child support lien shall remain in effect until satisfied, extinguished, or released.

(g) A lien shall be enforceable by the child support enforcement agency or its designated counsel or by ~~[another]~~ any other state or agency administering a program under Title IV-D ~~[of the Social Security Act]~~ without the necessity of obtaining a court order in the following manner:

- (1) By intercepting or seizing periodic or lump-sum payments from:

- (A) A state or local agency, including unemployment compensation, and other benefits; and
- (B) Judgments, settlements, and lotteries; provided that unemployment compensation benefits may be intercepted only to the extent authorized by section 303(e) of the Social Security Act;
- (2) By attaching and seizing assets of the obligor held in financial institutions;
- (3) By attaching public and private retirement funds; and
- (4) By imposing liens in accordance with this section and, in appropriate cases, to force the sale of property and distribution of proceeds.

These procedures shall be subject to due process safeguards, including, as appropriate, requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.”

SECTION 5. Section 576D-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Upon the agency’s receipt of an ~~[interstate]~~ income withholding request from ~~[another jurisdiction,]~~ any other state or agency administering a program under Title IV-D, the agency may issue an income withholding order to collect the support imposed upon the obligor by a support order issued or modified by the other state. The order shall include an amount adequate to ensure that past due payments and payments that will become due in the future under the terms of the support order will be paid.”

SECTION 6. Section 576D-18, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The agency and other state ~~[or territorial]~~ agencies administering a program under Title IV-D shall have access, including automated inquiry access, to the records of all entities in the State for information on the employment, compensation, and benefits of any individual member, employee, or contractor of the entity, to accomplish the purposes of the child support program. The entities include but are not limited to for-profit, nonprofit, and labor organizations, and any agency, board, commission, authority, court, or committee of the State or its political subdivisions, notwithstanding any provision for confidentiality. Subject to safeguards on privacy and confidentiality and subject to the nonliability of entities that afford access under this section, the agency and other state ~~[or territorial]~~ agencies administering a program under Title IV-D shall also have access to records held by private entities with respect to individuals who owe or are owed support, or against or with respect to whom a support obligation is sought consisting of:

- (1) The names and addresses of individuals and the names and addresses of the employers of ~~[such]~~ those individuals as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized pursuant to section 576E-2; and
- (2) Information, including information on assets and liabilities, on ~~[such]~~ the individuals held by financial institutions.
- (d) Other ~~[federal, state, and territorial]~~ state and federal agencies conducting activities under ~~[the]~~ Title IV-D ~~[program]~~ shall have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

ACT 80

H.B. NO. 1045

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:3-401, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions of “benefit society”, “domestic insurer”, and “health maintenance organization” to read:

“Benefit society” means a mutual benefit society registered under section 432:1-301 or a fraternal benefit society organized under section 432:2-301.

“Domestic insurer” includes an insurer, a benefit society or a health maintenance organization.

“Health maintenance organization” means a health maintenance organization authorized under section 432D-2.”

2. By amending the definition of “total adjusted capital” to read:

““Total adjusted capital” means the sum of:

- (1) An insurer’s statutory capital and surplus, or net worth, as determined in accordance with the statutory accounting applicable to the annual financial statements or reports required to be filed under section 431:3-301[~~;~~], 432:1-404, 432:2-602, or 432D-5; and
- (2) Any other items that the risk-based capital instructions may provide.”

SECTION 2. Section 431:3-402, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-402 Risk-based capital reports. (a) Every domestic insurer, on or before each March 1 [~~(~~ the [~~“~~”filing date~~”~~], shall prepare and submit to the commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing any information that is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

- (1) With the National Association of Insurance Commissioners in accordance with the risk-based capital instructions; and
- (2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:
 - (A) Fifteen days from the receipt of notice to file its risk-based capital report with that state; or
 - (B) The filing date.

(b) A life or accident and health or sickness insurer’s risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the

covariance among the following, which shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

- (1) The risk with respect to the insurer's assets;
- (2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- (3) The interest rate risk with respect to the insurer's business; and
- (4) All other business risks and any other relevant risks that are set forth in the risk-based capital instructions.

(c) A property and casualty insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance among the following, which shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

- (1) Asset risk;
- (2) Credit risk;
- (3) Underwriting risk; and
- (4) All other business risks and ~~such~~ any other relevant risks as ~~are~~ set forth in the risk-based capital instructions.

(d) A benefit society or health maintenance organization's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance among the following, which shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

- (1) Asset risk;
- (2) Credit risk;
- (3) Underwriting risk; and
- (4) All other business risks and any other relevant risks as set forth in the risk-based capital instructions.

~~[(d)]~~ (e) An excess of capital, or net worth, over the amount produced by the risk-based capital requirements contained in this part and the formulas, schedules, and instructions referenced in this part is desirable in the business of insurance. Accordingly, insurers shall seek to maintain capital above the risk-based capital levels required by this part. Additional capital is used and useful in the business of insurance and helps to secure an insurer against various risks inherent in~~;~~ or affecting~~;~~ the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this part.

~~[(e)]~~ (f) If a domestic insurer files a risk-based capital report which, in the judgment of the commissioner, is inaccurate, then the commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk-based capital report ~~[as-ø]~~ adjusted pursuant to this subsection is referred to as an adjusted risk-based capital report."

SECTION 3. Section 431:3-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) "Company action level event" means any of the following events:
- (1) The filing of a risk-based capital report by an insurer which indicates that:
 - (A) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; ~~[ø]~~

- (B) If a life or accident and health or sickness insurer, the insurer has total adjusted capital [~~which is~~] greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and [~~2.5;~~] two and a half, and has a negative trend;
- (C) If a property and casualty insurer, the insurer has a total adjusted capital greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three, and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions; or
- (D) If a benefit society or health maintenance organization, the benefit society or health maintenance organization has a total adjusted capital greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three, and triggers the trend test determined in accordance with the trend test calculation included in the health risk-based capital instructions;
- (2) The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-407; or
- (3) If, pursuant to section 431:3-407, the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge."

SECTION 4. Section 431:3-406, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- "(b) In the event of a mandatory control level event:
- (1) With respect to a life or accident and health or sickness insurer, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as [~~are set forth in~~] provided by article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections [~~that are~~] afforded to insurers under section 431:15-201. Notwithstanding [~~any of the foregoing,~~] the requirements of this paragraph, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period; [~~or~~]
- (2) With respect to a property and casualty insurer, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15, or, in the case of an insurer that is writing no business and is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the com-

missioner to take action under article 15~~]~~ and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections ~~[that are]~~ afforded to insurers under section 431:15-201. Notwithstanding ~~[any of the foregoing,]~~ the requirements of this paragraph, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period~~[-]; or~~

- (3) With respect to a benefit society or health maintenance organization, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under section 431:15-201. Notwithstanding the requirements of this paragraph, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.”

SECTION 5. Section 431:3-408, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-408 Confidentiality and prohibition on announcements; prohibition on use in ratemaking. (a) All risk-based capital reports~~{[, to the extent the information [therein] contained in the report is not required to be set forth in a publicly available annual statement schedule~~}]~~, and risk-based capital plans~~{[, including the results or report of any examination or analysis of an insurer performed pursuant to this part and any corrective order issued by the commissioner pursuant to examination or analysis~~}]~~, with respect to any domestic insurer or foreign insurer [which are filed with] that are in the possession or under the control of the commissioner~~[-, constitute information that might be damaging to the insurer if made available to its competitors, and therefore]~~ shall be ~~[kept]~~ confidential by ~~[the commissioner. This information]~~ law and shall be privileged. Risk-based capital reports and risk-based capital plans subject to this section shall not be made public ~~[or], shall not be subject to subpoena~~], other than by the commissioner and then only to enforce actions taken by the commissioner pursuant to this part or any other provision of the insurance laws of this State.] or discovery, and shall not be admissible as evidence in any private civil action; provided that:~~~~~~~~

- (1) This section shall not be construed to limit the commissioner’s authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner’s official duties; and
- (2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any pri-

vate civil action concerning any confidential documents, materials, or information subject to this subsection.

(b) The commissioner may share documents, materials, or other information, including confidential and privileged documents, materials, or information subject to subsection (a), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities; provided that the recipient agrees to maintain the confidential and privileged status of the document, material, or other information and has the legal authority to do so.

(c) The commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The commissioner shall maintain as confidential or privileged, pursuant to subsection (a)(2), any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(d) The commissioner may enter into agreements governing sharing and use of information consistent with subsections (b) and (c).

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information subject to this section shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsections (b) and (c).

~~(b)~~ (f) The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. [Therefore, except] Except as otherwise required under this part, [the] making, publishing, disseminating, circulating, or placing before the public[;] or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public[;] in a newspaper, magazine, or other publication[; or] in the form of a notice, circular, pamphlet, letter, or poster[; or] over any radio or television station[;] or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer[;] or of any component derived in the calculation[;] by any insurer, producer, or other person engaged in any manner in the insurance business [would be] is misleading and is [therefore] prohibited[; provided that if]. If any materially false statement with respect to the comparison [regarding] of an insurer's total adjusted capital to any or all of its risk-based capital levels [(or any of them)] or [an] any inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity or inappropriateness of the statement[; or the inappropriateness, as the case may be,] then the insurer may publish an announcement in a written publication [if] for the sole purpose of [the announcement is to rebut] rebutting the materially false or inappropriate statement.

~~(e) The risk-based~~ (g) Risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking, [nor] considered or introduced as evidence in any rate proceeding, [nor] or

used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.”

SECTION 6. Section 431:3-409, Hawaii Revised Statutes, is amended to read as follows:

“**§431:3-409 Supplemental provisions; rules; exceptions.** (a) This part is supplemental to any other laws of this State, and shall not preclude or limit any other powers or duties of the commissioner under those laws, including[;] but not limited to article 15.

(b) The commissioner may adopt rules pursuant to chapter 91 necessary for the implementation of this part.

(c) The commissioner may exempt from the application of this part any domestic property and casualty insurer ~~[which:]~~ that:

- (1) Writes direct business in this State;
- (2) Writes direct annual premiums of \$2,000,000 or less; and
- (3) Assumes no reinsurance in excess of five per cent of direct premiums written.

(d) The commissioner may exempt from the application of this part any domestic benefit society or health maintenance organization that:

- (1) Writes direct business only in this State;
- (2) Assumes no reinsurance in excess of five per cent of direct premiums written; and
- (3) Writes direct annual premiums for comprehensive medical business of \$2,000,000 or less; or
- (4) Is a benefit society or health maintenance organization that covers fewer than two-thousand lives.”

SECTION 7. Section 432:1-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Article 2, article 2D, part IV of article 3, article 13, ~~[and]~~ article 14G, and article 15 of chapter 431, and the powers ~~[there]~~ granted by those provisions to the commissioner, shall apply to managed care plans, health maintenance organizations, or medical indemnity or hospital service associations~~[, which]~~ that are owned or controlled by mutual benefit societies[;] so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.”

SECTION 8. Section 432:2-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this article shall exempt fraternal benefit societies from the provisions and requirements of part IV of article 2, part IV of article 3, and article 15 of chapter 431 and of section 431:2-215.”

SECTION 9. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Article 2, article 2D, part IV of article 3, article 13, ~~[and]~~ article 14G, and article 15 of chapter 431, and the ~~[power there]~~ powers granted by those provisions to the commissioner[;] shall apply to health maintenance organizations, so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.”

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2011.

(Approved June 1, 2011.)

ACT 81

H.B. NO. 1049

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:2-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a chief deputy commissioner, who shall be subject to chapter 76. The chief deputy commissioner shall have the power to perform any act or duty assigned by the commissioner. If a commissioner has not been appointed, the chief deputy commissioner shall have the power to perform any act that the commissioner is authorized to perform until an appointment becomes effective. The certificate of the chief deputy commissioner’s appointment shall be filed in the office of the lieutenant governor.”

SECTION 2. Section 431:2-202.5, Hawaii Revised Statutes, is amended to read as follows:

“**§431:2-202.5 Approval; when deemed effective.** Except as provided otherwise, any approval required by law shall be deemed granted on the ~~[thirtieth]~~ sixtieth calendar day following the filing of the request for approval if the commissioner does not take any affirmative action to grant or deny the approval within ~~[thirty]~~ sixty calendar days of the request.”

SECTION 3. Section 431:2-206, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person competent to serve a summons shall serve upon the commissioner triplicate copies of legal process against an insurer for whom the commissioner is attorney. In the absence of the commissioner, the process may be served upon the chief deputy or the deputy in charge of the insurance function. At the time of service the plaintiff shall pay to the commissioner ~~[\$12]~~ \$25, taxable as costs in the action.”

SECTION 4. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“**§431:7-101 Fees.** (a) The commissioner shall collect in advance the following fees:

- (1) Certificate of authority: Issuance.....\$1,800
- (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing \$3,000
 - (B) Issuance of solicitation permit.....\$300
- (3) Producer’s license:
 - (A) Issuance, regular license.....\$100

	(B) Issuance, temporary license	\$100
(4)	Nonresident producer's license: Issuance	\$150
(5)	Independent adjuster's license: Issuance	\$150
(6)	Public adjuster's license: Issuance	\$150
(7)	[Workers' compensation claim] <u>Claims</u> adjuster's limited license: Issuance	\$150
(8)	Independent bill reviewer's license: Issuance	\$160
(9)	Limited producer's license: Issuance	\$120
(10)	Managing general agent's license: Issuance	\$150
(11)	Reinsurance intermediary's license: Issuance	\$150
(12)	Surplus lines broker's license: Issuance	\$300
(13)	Service contract provider's registration: Issuance	\$150
(14)	Approved course provider certificate: Issuance	\$200
(15)	Approved continuing education course certificate: Issuance	\$60
(16)	Vehicle protection product warrantor's registration: Issuance	\$150
(17)	Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.	
(18)	Limited line motor vehicle rental company producer's license: Issuance	\$2,000
(19)	Life settlement contract provider's license: Issuance	\$150
(20)	Life settlement contract broker's license: Issuance	\$150
(21)	(19) Examination for license: For each examination, a fee to be established by the commissioner.	

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$1,200 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$100 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$150 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$90 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$90 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$90 per year for all services (including extension of the license) for a ~~[workers' compensation]~~ claims adjuster's limited license;
- (7) \$120 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$90 per year for all services (including extension of the license) for a producer's limited license;
- (9) \$150 per year for all services (including extension of the license) for a regularly licensed managing general agent;

- (10) \$150 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$90 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) \$150 per year for all services (including renewal of registration) for a service contract provider;
- (13) \$130 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$40 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) \$150 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) ~~[\$40] A fee to be determined by the commissioner for [a] each criminal history record check[;] and fingerprinting; and~~
- (17) \$1,200 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer[;]
- (18) ~~\$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract provider; and~~
- (19) ~~\$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract broker].~~

The services referred to in paragraphs (1) to ~~[(19)]~~ (17) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.”

SECTION 5. Section 431:9-204, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-204 Applications for license. (a) Application for ~~[any such]~~ an adjuster or independent bill reviewer license shall be made to the commissioner upon forms ~~[as]~~ prescribed and furnished by the commissioner. As a part of or in connection with ~~[any such]~~ the application, the applicant shall furnish information including:

- (1) The applicant’s identity, personal history, experience, business records, and a full set of fingerprints, including a scanned file from a hard copy fingerprint, for the commissioner to obtain and receive national and state criminal history ~~[[record]]~~ checks from the Federal Bureau of Investigation and the Hawaii criminal justice data center, pursuant to section 846-2.7; and
 - (2) Other pertinent facts as the commissioner may reasonably require.
- ~~[(b)]~~ (1) ~~If the applicant is a partnership or corporation, the application shall furnish in addition to the requirements set forth in subsection (a):~~
- ~~(A) The names of all partners or officers; and~~
 - ~~(B) A designation of each individual who is to exercise the powers to be conferred by the license upon the partnership or corporation.~~
- (2) ~~Each individual shall be required to furnish information to the commissioner as though for an individual license.~~
- ~~(c)]~~ (b) Any person who wilfully ~~[misrepresenting]~~ misrepresents or ~~[omitting]~~ omits any fact required to be disclosed in ~~[any such]~~ an application filed pursuant to this section shall be liable for penalties as provided by this code.”

SECTION 6. Section 431:9C-101, Hawaii Revised Statutes, is amended by amending the definition of “managing general agent” to read as follows:

““Managing general agent” means any person, firm, association, or corporation that manages all or part of the insurance business of an insurer [(including the management of a separate division, department, or underwriting office)] and acts as an agent for ~~[such]~~ the insurer regardless of whether the person, firm, association, or corporation is known as a managing general agent, manager, or [other] similar term[.] and who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five per cent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year~~[, together with one or more of the following activities related to the business produced:]~~ and adjusts or pays claims in excess of ~~[an amount determined by the commissioner,]~~ \$10,000 or negotiates reinsurance on behalf of the insurer. Notwithstanding the ~~[preceding sentence,]~~ specified requirements, the following persons shall not be considered ~~[as]~~ managing general agents for ~~[the]~~ purposes of this article:

- (1) An employee of the insurer;
- (2) A United States manager of the United States branch of an alien insurer;
- (3) An underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer~~[,]~~ subject to article 11, and whose compensation is not based on the volume of premiums written;
- (4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under a power of attorney; and
- (5) Any person, firm, association, or corporation domiciled in the State ~~[and]~~, authorized to do business only in the State, and acting as a managing general agent for an insurer licensed and conducting business only in the State.”

SECTION 7. Section 431:10H-228, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer, health care service plan, or other entity providing long-term care insurance or benefits in this State shall provide a copy of any long-term care insurance advertisement intended for use in this State ~~[whether]~~ through written, radio, or television ~~[medium]~~ media to the commissioner for review or approval by the commissioner to ~~[the extent it may be reviewed under state law. In addition, all]~~ determine compliance with this article. All advertisements subject to this section shall be retained by the insurer, health care service plan, or other entity for at least three years from the date the advertisement was first used.”

SECTION 8. Section 431:11-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:
- (A) The terms shall be fair and reasonable;
 - (B) Charges or fees for services performed shall be reasonable;
 - (C) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

- (D) The books, accounts, and records of each party to all transactions shall be maintained so as to clearly and accurately disclose the nature and details of the transactions including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and
 - (E) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;
- (2) The following transactions involving a domestic insurer and any person in its holding company system shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior ~~[thereto;]~~ to the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved ~~[it]~~ the transaction within that period:
- (A) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments; provided that the transactions are equal to or exceed:
 - (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or
 - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;
 - (B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit; provided that the transactions are equal to or exceed:
 - (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or
 - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;
 - (C) Reinsurance agreements or modifications ~~[thereto]~~ to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five per cent of the insurer's surplus as regards policyholders~~;~~ as of the thirty-first day of December next preceding, including those agreements ~~[which]~~ that may require as consideration the transfer of assets from an insurer to a nonaffiliate~~;~~ if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
 - (D) All management agreements, service contracts, and ~~[all]~~ cost-sharing arrangements; and

(E) Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law;

- (3) A domestic insurer may not enter into transactions ~~[which]~~ that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur~~[-If];~~ provided that the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under section 431:11-111;
- (4) The commissioner, in reviewing transactions pursuant to subsection (a)(2), shall consider whether the transactions comply with the standards set forth in subsection (a)(1) and whether ~~[they]~~ the transactions may adversely affect the interests of policyholders; and
- (5) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one person if the total investment in the person by the insurance holding company system exceeds ten per cent of the ~~[corporation's]~~ person's voting securities~~[-]~~ or the domestic insurer possesses control of the person as the term "control" is defined in section 431:11-102."

SECTION 9. Section 431:14G-105, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Every managed care plan shall file ~~[in triplicate]~~ with the commissioner~~[-]~~ every rate, charge, classification, schedule, practice, or rule and every modification of any of the foregoing that it proposes to use. Every filing shall ~~[state];~~

- (1) State its proposed effective date ~~[and shall indicate];~~
- (2) Indicate the character and extent of the coverage contemplated~~[-~~ The filing also shall include];
- (3) Include a report on investment income~~[-];~~ and
- (4) Be accompanied by a \$50 fee payable to the commissioner which shall be deposited in the commissioner's education and training fund.

(b) ~~[Each filing shall be accompanied by a \$50 fee payable to the commissioner and shall be deposited in the commissioner's education and training fund.]~~ For each filing, an insurer shall submit to the commissioner:

- (1) An electronic copy of the filing; or
- (2) Two printed copies of the filing;

provided that the commissioner may request an insurer that submits an electronic copy of the filing pursuant to paragraph (1) to also submit a printed copy of the electronic filing."

SECTION 10. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) After each covered event, if the board ~~[shall determine]~~ determines that the moneys in the hurricane reserve trust fund, excluding moneys determined by the board to be needed to continue fund operations following ~~[that]~~

the covered event, will be insufficient to pay claims and other obligations of the fund arising out of that covered event, the Hawaii hurricane relief fund [is authorized to] shall levy a surcharge not to exceed seven and one-half per cent a year on premiums charged for all property and casualty insurance policies issued for risks insured in this State. These moneys may be deposited into the hurricane reserve trust fund or into trust or custodial accounts[,] created for the benefit of the fund's secured parties[,] that are held inside or outside the hurricane reserve trust fund. The [formula to calculate the amount and period of the surcharge for each covered event and the procedures and methodology for payment of claims and other obligations of the fund shall be provided in the plan of operation and the] surcharge [may] shall remain in effect until all claims and other obligations of the fund, including but not limited to claims under fund policies of hurricane property insurance, claims financing transactions, bonds, notes, and other obligations arising out of that covered event[-, shall] have been fully discharged. The amount and reason for any surcharge made pursuant to this subsection shall be separately stated on any billing sent to an insured. The surcharge shall not be considered premiums for any other purpose[,] including the computation of gross premium tax or the determination of producers' commissions. The fund may establish procedures for insurers to collect the surcharge from customers who hold property or casualty policies."

SECTION 11. Section 432:1-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~"(a) [After the organization of the society is completed, and before a certificate of compliance is granted by the commissioner, the] The society shall deposit with the commissioner [one-half the maximum amount required to be maintained in its death benefit and disability, or sick, or other benefit fund, as provided in section 432:1-401,] fifty per cent of the minimum net worth requirement provided in section 432:1-407(a)(2), either in cash or in securities approved by the commissioner[-,] provided that the deposit shall be no less than \$1,000,000 and shall not exceed \$20,000,000."~~

SECTION 12. Section 432:1-401, Hawaii Revised Statutes, is repealed.

SECTION 13. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2011; provided that the amendments made to section 431:7-101, Hawaii Revised Statutes, shall not be repealed when that section is reenacted on July 1, 2014, pursuant to section 7(3) of Act 59, Session Laws of Hawaii 2010.

(Approved June 1, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 82

H.B. NO. 4

A Bill for an Act Relating to the Interstate Compact on Educational Opportunity for Military Children.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 152, Session Laws of Hawaii 2009, is amended to read as follows:

“SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
INTERSTATE COMPACT ON EDUCATIONAL
OPPORTUNITY FOR MILITARY CHILDREN**

§ -1 Enactment of compact. The interstate compact on educational opportunity for military children is hereby enacted into law and entered into by the State of Hawaii as a party, and is in full force and effect between the State and any other state joining therein in accordance with the terms of the compact, which compact is substantially as follows:

**ARTICLE I
PURPOSE**

The purpose of this compact is to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

- (1) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance and age requirements;
- (2) Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;
- (3) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;
- (4) Facilitating the on-time graduation of children of military families;
- (5) Providing for the adoption and enforcement of administrative rules implementing the provisions of this compact;
- (6) Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;
- (7) Promoting coordination between this compact and other compacts affecting military children; and
- (8) Promoting flexibility and cooperation between the educational system, parents, and the student to achieve educational success for the student.

**ARTICLE II
DEFINITIONS**

As used in this compact, unless the context clearly requires a different construction:

“Active duty” means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 United States Code Section 101(d)(1) and Section 101(d)(6)(A).

“Appropriate education agency” means a public authority legally constituted by a state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

“Children of military families” means school-aged children, enrolled in kindergarten through twelfth grade, in the households of active duty members.

“Compact” means the interstate compact on educational opportunity for military children.

“Compact commissioner” means the voting representative of each compacting state appointed pursuant to article VIII of this compact.

“Deployment” means the period of [~~one month~~] three months prior to the service members’ departure from their home station on military orders through six months after return to their home station.

“Education records” means those official records, files, and data directly related to a student and maintained by the school or appropriate education agency, including records encompassing all the material kept in the student’s cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

“Extracurricular activities” means a voluntary activity sponsored by the school or appropriate education agency or an organization sanctioned by the appropriate education agency. Extracurricular activities include preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

“Interstate commission on educational opportunity for military children” or “interstate commission” means the commission that is created under article IX of this compact.

“Local education agency” means a public authority legally constituted by a state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

“Member state” means a state that has enacted this compact.

“Military installation” means a base, camp, post, station, yard, center, homeport facility for any ship, or other [~~activity~~] facility under the jurisdiction of the United States Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other [~~Unites~~] United States territory. The term shall not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

“Non-member state” means a state that has not enacted this compact.

“Receiving state” means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

“Rule” means a written statement by the interstate commission promulgated pursuant to article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, [~~and~~] has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

“Sending state” means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other United States territory.

“Student” means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

“Student financial obligation” means any unpaid or outstanding fines or fees.

["Test period" means the date(s) in which schools are conducting testing, assessments, or both, that are required by federal or state laws.]

"Transition" means the formal and physical process of transferring from school to school, or the period of time in which a student moves from one school in the sending state to another school in the receiving state.

"Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

"Veteran" means a person who served in the uniformed services and who was discharged or released therefrom under honorable conditions.

ARTICLE III APPLICABILITY

(a) Except as otherwise provided in subsection (b), this compact shall apply to the children of:

- (1) Active duty members of the uniformed services as defined in this compact, including members of the national guard and military reserves on active duty orders pursuant to 10 United States Code Section 101(d)(1) and Section 101(d)(6)(A);
- (2) Members or veterans of the uniformed services who are severely injured and medically discharged or retired, for a period of one year after medical discharge or retirement; and
- (3) Members of the uniformed services who die while on active duty or as a result of injuries sustained while on active duty, for a period of one year after death.

(b) This interstate compact shall only apply to appropriate education agencies as defined in this compact.

- (c) The provisions of this compact shall not apply to the children of:
- (1) Inactive members of the national guard and military reserves;
 - (2) Members of the uniformed services now retired, except as provided in subsection (a);
 - (3) Veterans of the uniformed services, except as provided in subsection (a); and
 - (4) Other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV EDUCATIONAL RECORDS AND ENROLLMENT

(a) Unofficial or "hand-carried" education records. If official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial education records containing uniform information as determined by the interstate commission. ~~[The unofficial education records shall only be furnished to the parents if all student financial obligations have been met.]~~ Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

(b) Official education records and transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state ~~[will]~~ shall process and furnish the official education records to the school in the

receiving state within ten business days or within such time as is reasonably determined under the rules promulgated by the interstate commission. [~~The official education records shall only be furnished to the parents if all student financial and school obligations have been met.~~]

(c) Immunizations. Compacting states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the interstate commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations shall be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission. This section shall not prohibit state department of health requirements concerning tuberculosis examinations.

(d) Kindergarten and first grade entrance age. Students [~~may~~] shall continue their enrollment at a grade level in the receiving state commensurate with their grade level (including kindergarten) from an appropriate education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the appropriate education agency in the sending state shall be eligible for enrollment in the next higher grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on [~~their~~] the student's validated level from an accredited school in the sending state.

ARTICLE V PLACEMENT AND ATTENDANCE

(a) Course placement. If the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered or both; provided that these programs exist in the receiving state school [~~and space is available as determined by the principal~~]. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This subsection shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course. The receiving state school may allow the student to attend similar educational courses within the school district if the receiving state school does not offer such educational courses.

(b) Educational program placement. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation and placement in like programs in the sending state; provided that these programs exist in the receiving state school [~~and space is available as determined by the principal~~]. The programs include but are not limited to gifted and talented programs and English as a second language programs. This subsection shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student. The receiving state school may allow the student to attend similar educational courses within the school district if the receiving state school does not offer such educational programs.

(c) Special education services[-]:

- (1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 [U.S.C.] United States Code Section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program[-]; and
- (2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 [U.S.C.A.] United States Code Annotated Section 794, and with Title II of the Americans with Disabilities Act, 42 [U.S.C.A.] United States Code Annotated Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing Section 504 or Title II Plan, to provide the student with equal access to education. This paragraph shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.
- (d) Placement flexibility. Appropriate education agency administrative officials shall have flexibility in waiving a course or program [~~prerequisites;~~] pre-requisite, or other precondition for placement in courses or programs offered under the jurisdiction of the appropriate education agency.
- (e) Absence as related to deployment activities. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the appropriate education agency superintendent to visit with the student's parent or legal guardian relative to such leave or deployment of the parent or guardian. [~~This subsection shall not require excused absences to be granted during test periods.~~]

**ARTICLE VI
ELIGIBILITY**

- (a) Eligibility for enrollment[-]:
 - (1) Special power of attorney, relating to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent[-];
 - (2) The appropriate education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent[-]; and
 - (3) A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which the child was permanently enrolled while residing with the custodial parent. Upon the return of the custodial parent, the child shall be allowed to finish the school year in the school currently enrolled, but shall enroll in the school within the jurisdiction of the custodial parent during the following school year.
- (b) Eligibility for extracurricular participation. State education agencies and appropriate education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified and space is available in the receiving state school as determined by the principal.

ARTICLE VII GRADUATION

To facilitate the on-time graduation of children of military families, state and appropriate education agencies shall incorporate the following procedures:

- (1) Waiver requirements. Appropriate education agency administrative officials ~~may~~ shall waive specific courses required for graduation if similar coursework has been satisfactorily completed in another appropriate education agency or shall provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the appropriate education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time. This section shall not obligate the school or appropriate education agency to pay for an online course if funding is unavailable[-];
- (2) Exit exams. For students entering high school in the eleventh or twelfth grade, states shall accept:
 - (A) Exit or end-of-course exams required for graduation from the sending state;
 - (B) National norm-referenced achievement tests; or
 - (C) Alternative testing, in lieu of testing requirements for graduation in the receiving state.

If subparagraphs (A), (B), and (C) cannot be accommodated by the receiving state for a student transferring in the student's senior year, then paragraph (3) shall apply[-]; and

- (3) Transfers during senior year. If a military student transferring at the beginning or during the senior year is ineligible to graduate from the receiving appropriate education agency after all alternatives have been considered, the sending and receiving appropriate education agencies shall ensure the receipt of a diploma from the sending appropriate education agency, if the student meets the graduation requirements of the sending appropriate education agency. If one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with paragraphs (1) and (2) of this article. This paragraph permits but shall not require a sending state to deny a diploma to a student transferring to a receiving state with an exit exam requirement if the student does not meet the graduation requirements of the appropriate education agency of the sending state.

ARTICLE VIII STATE COORDINATION

(a) Each member state, through the creation of a state council or use of an existing body or board, shall provide for the coordination among its agencies of government, appropriate education agencies, and military installations concerning the state's participation in, and compliance with, this compact and interstate commission activities. While each member state may determine the membership of its state council, its membership shall include at least the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high

concentration of military children may appoint a superintendent from another school district to represent appropriate education agencies on the state council.

(b) The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(c) The compact commissioner responsible for the administration and management of the state's participation in the compact shall be recommended by the superintendent of education with the approval of the board of education.

(d) The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

**ARTICLE IX
INTERSTATE COMMISSION ON EDUCATIONAL
OPPORTUNITY FOR MILITARY CHILDREN**

(a) The member states hereby create the "interstate commission on educational opportunity for military children". The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

- (1) Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact;
- (2) Consist of one interstate commission voting representative from each member state who shall be that state's compact commissioner[-];
 - (A) Each member state represented at a meeting of the interstate commission is entitled to one vote[-];
 - (B) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission[-];
 - (C) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting[-]; and
 - (D) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication;
- (3) Include ex-officio, non-voting representatives who are members of interested organizations. The ex-officio members, as defined in the bylaws, may include members of the representative organizations of military family advocates, appropriate education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members;
- (4) Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;
- (5) Establish an executive committee, whose members shall include the officers of the interstate commission and such other members of the interstate commission as determined by the bylaws. Members

of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States Department of Defense shall serve as an ex-officio, nonvoting member of the executive committee; and

- (6) Establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(b) Public notice shall be given by the interstate commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

- (1) Relate solely to the interstate commission's internal personnel practices and procedures;
- (2) Disclose matters specifically exempted from disclosure by federal and state statute;
- (3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
- (4) Involve accusing a person of a crime, or formally censuring a person;
- (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (6) Disclose investigative records compiled for law enforcement purposes; or
- (7) Specifically relate to the interstate commission's participation in a civil action or other legal proceeding.

(c) For a meeting, or portion of a meeting, closed pursuant to subsection (b), the interstate commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant [~~exemptible~~] exempt provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of roll call votes. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission.

(d) The interstate commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. The methods of data collection, exchange, and reporting, as is reasonably possible, shall conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

(e) The interstate commission shall create a process that permits military officials, education officials, and parents to inform the interstate commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or appropriate education agency. This section shall not be construed to create a private right of action against the interstate commission, any member state, or any state education agency or appropriate education agency.

ARTICLE X

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

- (1) To provide for dispute resolution among member states;
- (2) To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact;
- (3) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions;
- (4) To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, use all necessary and proper means, including the use of judicial process. Any action to enforce compliance with the compact provisions by the interstate commission shall be brought against a member state only;
- (5) To establish and maintain offices which shall be located within one or more of the member states;
- (6) To purchase and maintain insurance and bonds;
- (7) To borrow, accept, hire, or contract for services of personnel;
- (8) To establish and appoint committees including an executive committee as required by article IX, subsection (a), paragraph (5), which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
- (9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of it;
- (11) To lease, purchase, or accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) To establish a budget and make expenditures;
- (14) To adopt a seal and bylaws governing the management and operation of the interstate commission;
- (15) To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the interstate commission during the preceding year. The reports shall include any recommendations that may have been adopted by the interstate commission;

- (16) To coordinate education, training, and public awareness regarding the compact[;] and its implementation and operation for officials and parents involved in such activity;
- (17) To establish uniform standards for the reporting, collecting, and exchanging of data;
- (18) To maintain corporate books and records in accordance with the bylaws;
- (19) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and
- (20) To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

**ARTICLE XI
ORGANIZATION AND OPERATION OF THE INTERSTATE
COMMISSION**

(a) The interstate commission, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including:

- (1) Establishing the fiscal year of the interstate commission;
- (2) Establishing an executive committee and such other committees as may be necessary;
- (3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;
- (5) Establishing the titles and responsibilities of the officers and staff of the interstate commission;
- (6) Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and
- (7) Providing "start up" rules for the initial administration of the compact.

(b) The interstate commission, by a majority of the members, shall elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs incurred by them in the performance of their responsibilities as officers of the interstate commission.

(c) The executive committee shall have such authority and duties as may be set forth in the bylaws, including:

- (1) Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;
- (2) Overseeing an organizational structure within, and appropriate procedures for, the interstate commission to provide for the creation of

rules, operating procedures, and administrative and technical support functions; and

- (3) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the interstate commission.

(d) The executive committee, subject to the approval of the interstate commission, may appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

(e) The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of such person[-]:

- (1) The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this paragraph shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of such person[-];
- (2) The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such person[-]; and
- (3) To the extent not covered by the state involved, a member state, the interstate commission, or the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from

intentional or wilful and wanton misconduct on the part of such persons.

(f) The compact commissioner and any person representing the state in the interstate commission, in their individual or official capacity, and the member state, shall be immune from suit and liability caused by or arising out of actions, errors, or omissions of the interstate commission.

ARTICLE XII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate reasonable rules to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, then the action by the interstate commission shall be invalid and have no force or effect.

(b) Rules shall be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981, as may be appropriate to the operations of the interstate commission.

(c) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

(d) If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt this compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

(a) Oversight[-];

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules adopted hereunder shall have the force and effect of law[-];

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission[-]; and

(3) The interstate commission shall be entitled to receive all service of process in any such proceeding[-] and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact, or promulgated rules.

(b) Default, technical assistance, suspension, and termination. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default,

and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default shall not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(f) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(g) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its ~~[principal]~~ principle offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(h) Dispute resolution[-]:

(1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states[-]; and

(2) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution for disputes as appropriate.

(i) Enforcement[-]:

(1) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact[-];

(2) The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its ~~[principal]~~ principle offices, to enforce compliance with the provisions of this compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees[-]; and

(3) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

**ARTICLE XIV
FINANCING OF THE INTERSTATE COMMISSION**

(a) The interstate commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff, which shall be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate rules binding upon all member states.

(c) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

**ARTICLE XV
MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT**

(a) Any state is eligible to become a member state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007. Thereafter, it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of the compact by all states.

(c) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

**ARTICLE XVI
WITHDRAWAL AND DISSOLUTION**

(a) Withdrawal[-]:

(1) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law[-];

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state[-];

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate

commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof[-];

- (4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal[-]; and
- (5) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.
- (b) Dissolution of compact[-];
- (1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state[-]; and
- (2) Upon the dissolution of this compact, the compact becomes void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII

SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) Other laws[-];

(1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact[-]; and

(2) All member states' laws conflicting with this compact shall be superseded to the extent of the conflict.

(b) Binding effect of the compact[-];

(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, shall be binding upon the member states[-];

(2) All agreements between the interstate commission and the member states shall be binding in accordance with their terms[-]; and

(3) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

§ -2 **State council.** There is established within the board of education for administrative purposes the state council on educational opportunity for military children. The board of education shall establish the state council, as required by article VIII of the compact. The membership of the state council shall include, at a minimum:

- (1) The superintendent of education or the superintendent's designee;

- (2) The complex area superintendents of the administrative districts that contain the Leilehua, Radford/Moanalua, and Kalaheo school complexes;
- (3) A complex area superintendent from the Leeward district;
- (4) The military liaison from the department of education;
- (5) A uniformed military representative from the United States Pacific Command;
- (6) One installation-level uniformed military representative from each branch of service of the Air Force, Army, Marine Corps, Navy, and Coast Guard;
- (7) [~~A representative of the executive branch of government;~~] The governor or the governor's designee;
- (8) The chairperson of the senate education committee or the chairperson's designee;
- (9) The chairperson of the house education committee or the chairperson's designee; and
- (10) Other offices and stakeholder groups the state council deems necessary.

Members of the state council may delegate voting authority to another person for a specified meeting or meetings. The state council shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

The council shall establish policies and procedures governing its operations but subject to the open meeting requirements of chapter 92.

§ -3 Appointment of compact commissioner. As required by article VIII of the compact, the state superintendent of education shall recommend, with the approval of the board of education, the compact commissioner, who shall be responsible for the administration and management of the State's participation in the compact."

SECTION 2. This Act shall take effect on July 1, 2009[~~and shall be repealed on July 1, 2011.~~]"

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 30, 2011.

(Approved June 3, 2011.)

ACT 83

H.B. NO. 924

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the construction industry is a vital component of Hawaii's economy and a healthy, robust construction industry is critical to the State's economic recovery because of its role in generating good-paying jobs and leveraging federal resources to complete important public

works projects. The legislature further finds that the construction industry is one of the State's main economic drivers by directly creating jobs and opportunities for investment, and by indirectly supporting dozens of affiliated industries from equipment rental to supply retailers and lunch wagons. A single large construction project may provide employment for hundreds of individuals including managers, support staff, and laborers as well as subcontractors that, in turn, support their own small-business staffs and their own related industries such as dealers of specialized supplies.

The reach of the construction industry in Hawaii's economy is broad and deep; any disruption to the industry has far-reaching consequences for the State's total economy. Particularly at this time, as Hawaii's economy is approaching the brink of recovery from the last decade's historic recession, the State can ill-afford to cripple one of its most important economic engines.

The legislature further finds that the 2010 decision of the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.*, 231 P.3d 67 (Haw. Ct. App. 2010), creates uncertainty in the construction industry, and invalidates insurance coverage that was understood to exist and that was already paid for by construction professionals. Prior to the *Group Builders* decision, which held that commercial general liability policies do not cover bodily injury or property damage arising from construction defects, construction professionals entered into and paid for insurance contracts under the reasonable, good-faith understanding that bodily injury and property damage resulting from construction defects would be covered under the insurance policy. It was on that premise that general liability insurance was purchased.

The legislature also finds that the sudden invalidation of relied-upon insurance coverage may be economically disastrous to contractors, building owners, injured persons, and the general public. The legislature finds that in the event of a major incident involving a construction project that is affected by the *Group Builders* decision, a construction professional's uninsured liability for damages to people and property could result not only in the loss of millions of dollars and the closure of business for the construction professional and the construction project, but also to the absence of redress for individuals who may be harmed. The *Group Builders* decision affects insurance policies for construction projects that may already be in progress or even completed and for which construction defects and any resulting damages may have not yet become manifest. This additional uncertainty in an industry that is already heavily dependent on uncontrollable factors such as the weather and the global supply chain is a disincentive for investment in Hawaii's construction industry and in important public and private construction projects including critical public infrastructure. The absence of relied-upon insurance coverage affects not only construction professionals but also purchasers of real estate, including residential real estate, who will be left without effective remedy for problems that become apparent years after purchase. Most broadly affected by the *Group Builders* decision is the general public who use and enjoy publicly-accessible buildings and facilities and who, in the event of a catastrophic incident, will be denied remedy for potentially devastating consequences to their health and safety.

Finally, the legislature finds that the *Group Builders* decision directly affects the interests of the State. The decision applies to public construction projects to which the State is a party and may expose the State to fiscal liability unmitigated by insurance in the event of a construction defect caused by a third-party contractor. Further, by putting the construction industry, contractors, subcontractors, workers, developers, purchasers, and the general public at risk of uncompensated, unmitigated financial and personal harm, the *Group Builders* decision creates a public policy crisis that only the State is in a position to remedy.

The purpose of this Act is to restore the insurance coverage that construction industry professionals paid for and to ensure that the good-faith expectations of parties at the time they entered into the insurance contract are upheld.

SECTION 2. Chapter 431, article 1, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§431:1- Insurance policies issued to construction professionals. (a) For purposes of a liability insurance policy that covers occurrences of damage or injury during the policy period and that insures a construction professional for liability arising from construction-related work, the meaning of the term “occurrence” shall be construed in accordance with the law as it existed at the time that the insurance policy was issued.

(b) Notwithstanding any other provision to the contrary, this section shall apply to surplus lines insurance as defined by section 431:8-102.

(c) Any provision of an insurance policy issued in violation of this section shall be void and unenforceable as against public policy.

(d) This section shall apply to all liability insurance policies issued and in effect as of the effective date of this Act.

(e) For purposes of this section:

“Construction professional” means a person, sole proprietorship, partnership, corporation, limited liability corporation, or other entity that engages in an activity intended to assist in the development, construction, or repair of an improvement to real property, including a contractor licensed pursuant to chapter 444, a building owner, or a developer of a project regardless of whether the person or entity maintains a professional license.

“Liability insurance policy” means a contract of insurance including an owner-controlled, contractor-controlled, or other similar pooled insurance program that covers occurrences of damage or injury during the policy period and that insures a construction professional for liability arising from construction-related work.”

SECTION 3. The revisor of statutes shall insert the effective date of this Act in the appropriate place in section 2 of this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 3, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 84

H.B. NO. 1060

A Bill for an Act Relating to Information Technology.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 200, Session Laws of Hawaii 2010, implemented the information technology recommendations of Auditor’s Report No. 09-06, “Audit of the State of Hawaii’s Information Technology:

Who's in Charge?", by establishing a full-time chief information officer and an information technology steering committee. This Act also established the shared services technology special fund to facilitate the State's ability to generate overall cost reductions through economies of scale and decreased administrative burdens.

In addition, Act 200 requested that the governor report to the legislature prior to the 2011 regular session with recommendations for the most appropriate state agency to house the chief information officer and any personnel under the authority of the chief information officer; the appropriate funding level for the shared services technology special fund established in section 27-43(c), Hawaii Revised Statutes; and the designated percentage of all moneys collected pursuant to section 36-27(a), Hawaii Revised Statutes, for deposit into the shared services technology special fund.

The legislature further finds that the provisions of Act 200 have proven essential – and prophetic – regarding the State's information technology security, given recent high profile security breaches affecting state agencies. In particular, fourteen positions requested in H.B. No. 200, H.D. 1, S.D. 1,¹ are critical to the successful implementation of increased data security requirements and enhanced training for state agencies.

The purpose of this Act is to implement recommendations regarding:

- (1) Placement of the chief information officer in the department of accounting and general services; and
- (2) Designation of the percentage of all moneys collected pursuant to section 36-27(a), Hawaii Revised Statutes, for deposit into the shared services technology special fund at three per cent, which will ensure an income of approximately \$1,200,000 annually for the uses of the fund, and a significant savings of general fund revenues.

SECTION 2. Section 27-43, Hawaii Revised Statutes, is amended to read as follows:

“~~§27-43~~ Information technology; chief information officer; information technology steering committee; establishment; responsibilities. (a) There is established within the ~~[office of the governor]~~ department of accounting and general services a full-time chief information officer to organize, manage, and oversee statewide information technology governance, including supervision and oversight of the information and communication services division of the department of accounting and general services. The chief information officer shall be appointed by the governor as provided in section 26-34. The chief information officer shall report directly to the governor and, in conjunction with the information technology steering committee, shall:

- (1) Develop, implement, and manage statewide information technology governance;
- (2) Develop, implement, and manage the state information technology strategic plans;
- (3) Develop and implement statewide technology standards;
- (4) Report annually to the governor and the legislature on the status and implementation of the state information technology strategic plan; ~~[and]~~
- (5) Perform other necessary or desirable functions to facilitate the intent of this section~~[-]; and~~
- (6) Employ persons exempt from chapters 76 and 89.

(b) There is established an information technology steering committee to assist the chief information officer in developing the State's information technology standards and policies, including but not limited to:

- (1) Assisting the chief information officer in developing and implementing the state information technology strategic plans;
- (2) Assessing executive branch departments' progress in meeting the objectives defined in the state information technology strategic plans and identifying best practices for shared or consolidated services;
- (3) Ensuring technology projects are selected based on their potential impact and risk to the State, as well as their strategic value;
- (4) Ensuring that executive branch departments maintain sufficient tools to assess the value and benefits of technology initiatives;
- (5) Assisting the chief information officer in developing state information technology standards and policies; and
- (6) Clarifying the roles, responsibilities, and authority of the information and communication services division, specifically as it relates to its statewide duties.

The members of the information technology steering committee shall be appointed in equal number by the senate president and speaker of the house of representatives [~~in equal number~~], respectively, and shall include representatives from executive branch departments, including large user agencies such as the department of education and the University of Hawaii; the judiciary; the legislature; and private individuals. The chief information officer shall serve as the chair of the committee and shall ensure that the committee is evaluated periodically.

(c) There is established within the department of [~~budget and finance~~] accounting and general services a special fund to be known as the shared services technology special fund to be administered and expended by the chief information officer for the purposes of this subsection. Three per cent of the receipts collected from special funds pursuant to section 36-27 shall be deposited into the shared services technology special fund. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the chief information officer and the information technology steering committee, including the employment and training of staff and any other activities deemed necessary by the chief information officer to carry out the purposes of this section.

(d) The chief information officer and the comptroller may raise funds to defray administrative costs and may accept donations of money and personal property on behalf of the information technology steering committee; provided that all donations accepted from private sources shall be expended in the manner prescribed by the contributor, and all moneys received shall be deposited into the information technology trust account. The chief information officer may also directly receive donated personal services and personal property for which funding is not required.

(e) The chief information officer shall submit an annual report to the governor and the legislature no later than twenty days prior to the convening of each regular session of the legislature on the activities and programs under the authority of the chief information officer and the information technology steering committee, and the expenditures of all moneys received from all sources and deposited into the information technology trust account and the shared services technology special fund."

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding any other law to the contrary, the director shall deposit three per cent of all moneys collected pursuant to subsection (a) into the shared services technology special fund established pursuant to section 27-43.”

SECTION 4. There is appropriated out of the shared services technology special fund established pursuant to section 27-43, Hawaii Revised Statutes, the sum of \$1,200,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 to fund the operations of the chief information officer and the information technology steering committee, including the employment and training of staff and any other activities deemed necessary by the chief information officer.

The sums appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 7, 2011.)

Note

1. Act 164.

ACT 85

H.B. NO. 968

A Bill for an Act Relating to Domestic Abuse Protective Orders.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 586-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A temporary restraining order granted pursuant to this chapter shall remain in effect at the discretion of the court, for a period not to exceed ~~[ninety]~~ one hundred eighty days from the date the order is granted~~[-]~~ or until the effective date, as defined in section 586-5.6, of a protective order issued by the court, whichever occurs first.”

SECTION 2. Section 586-5.6, Hawaii Revised Statutes, is amended to read as follows:

“**§586-5.6 Effective date.** The temporary restraining order shall be effective as of the date of signing and filing; provided that if a temporary restraining order is granted orally in the presence of all the parties and the court determines that each of the parties understands the order and its conditions, if any, then the order shall be effective as of the date it is orally stated on the record by the court until further order of the court. Protective orders orally stated by the court on the record shall be effective as of the date of the hearing if the respondent attends the hearing or, if the respondent was served but failed to appear, then upon service of the protective order upon the respondent until further order of the court; provided that all oral protective orders shall be reduced to writing and issued forthwith. The judiciary shall provide forms which will enable the court to issue all temporary restraining orders forthwith.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 8, 2011.)

ACT 86

S.B. NO. 1329

A Bill for an Act Relating to Motor Vehicle Weight Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 249-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections ~~[249-3 to]~~ 249-4, 249-5.5, 249-6, and 249-6.5, in addition to all other fees and taxes levied by this chapter, shall be subject to an annual state vehicle weight tax. The tax shall be levied by the county director of finance at the rate of ~~[-75]~~ 1.75 cents a pound according to the net weight of each vehicle as the “net weight” is defined in section 249-1 up to and including four thousand pounds net weight; vehicles over four thousand pounds and up to and including seven thousand pounds net weight shall be taxed at the rate of ~~[1.00-cent]~~ 2.00 cents a pound; vehicles over seven thousand pounds and up to and including ten thousand pounds net weight shall be taxed at the rate of ~~[1.25]~~ 2.25 cents a pound; vehicles over ten thousand pounds net weight shall be taxed at a flat rate of ~~[\$150-]~~ \$300.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 8, 2011.)

ACT 87

H.B. NO. 855

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Pacific Power and Water Company, Inc., in the Development of Hydropower Facilities in Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the development of clean and renewable energy is in the best interest of the public. Development of hydropower projects would help achieve renewable energy targets of the State, promote Hawaii's water resources as a source of renewable energy, and reduce Hawaii's reliance on imported oil. The legislature finds that the issuance of special purpose

revenue bonds under this Act is in the public interest and beneficial for the public health, safety, and general welfare.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$25,000,000, in one or more series, for the purpose of assisting Pacific Power and Water Company, Inc., with the planning, permitting, designing, constructing, equipping, and operating of hydropower plants at locations throughout Hawaii. The legislature hereby finds and determines that the planning, permitting, designing, constructing, and operating of hydropower plants constitutes a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2016, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2016.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 8, 2011.)

ACT 88**H.B. NO. 423**

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that it is in the public interest to encourage the development of cogeneration facilities that make electric energy available to the public from the sale of electricity to a utility company. The legislature further finds that Carbon Bio-Engineers, Inc., is engaged in the development of cogeneration facilities that will sell electricity in this manner by processing non-fossil fuel feedstock, using a material reduction process by pressurized pyrolysis and gasification, for direct production of energy-related carbon products and fuels and an indirect production of electricity.

The legislature further finds that the benefits of the development of co-generation facilities include:

- (1) Reduction of greenhouse gas emissions;
- (2) Reduction of landfill waste streams;
- (3) Reduction of transportation and disposal costs;
- (4) Creation of local technical and semi-technical jobs; and
- (5) Production of renewable energy for local communities through distributed generation.

The legislature further finds that Carbon Bio-Engineers, Inc.'s, work in creating alternative energy for the State is an industrial enterprise defined in part V, chapter 39A, Hawaii Revised Statutes, and may be assisted through the issuance of special purpose revenue bonds.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$40,000,000, in one or more series, for the purpose of assisting Carbon Bio-Engineers, Inc., or a partnership in which Carbon Bio-Engineers, Inc., is a general partner, with the establishment of cogeneration and related energy-production facilities at various locations in the State. The electrical output of this plant and facilities shall be made available for use by members of the general public by sale to electric utilities serving the public. Thermal fluid output of this plant and related energy-production facilities shall be made available for use by members of the general public by sale to existing and planned manufacturing and processing entrepreneurs in the area.

The legislature finds and determines that the activity and facilities of Carbon Bio-Engineers, Inc., constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2016, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2016.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 8, 2011.)

ACT 89

H.B. NO. 1286

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist BioEnergy Hawaii, LLC.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that it is in the public interest to encourage the development of cogeneration facilities that make energy available to members of the general public by the sale of electric energy or biofuels, or both, to an electric utility or refinery, or both, serving the area.

The legislature also finds that the benefits of the development of cogeneration facilities include:

- (1) Reduced greenhouse gas emissions;
- (2) Reduced landfill waste streams;
- (3) Reduced transportation and disposal costs;
- (4) Creation of local technical and semi-technical jobs;
- (5) Renewable energy for local communities through distributed generations; and
- (6) Reduced dependence on imported fossil fuels for local transportation and energy needs.

The legislature also finds that BioEnergy Hawaii, LLC, is engaged in the development of a cogeneration facility project that will sell energy in the form of electricity or biofuels, or both, that it produces to electric utilities or refineries, or both, serving the public by processing non-fossil fuel feedstock.

The legislature further finds that BioEnergy Hawaii, LLC, may be assisted through the issuance of special purpose revenue bonds because it is an industrial enterprise pursuant to part V of chapter 39A, Hawaii Revised Statutes, relating to the financing of an industrial enterprise.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$100,000,000, in one or more series, for the purpose of assisting BioEnergy Hawaii, LLC, a Hawaii limited liability company, or a partnership in which BioEnergy Hawaii, LLC, is a general partner, for the establishment of a cogeneration facility and related energy production facilities. The electrical output or biofuels energy, or both, of this plant and facilities shall be made available for use by members of the general public by sale to electric utilities or refineries, or both, serving the public. Thermal fluid output of this plant and related energy production facilities shall be made available to existing and planned manufacturing processing entrepreneurs in the area. The legislature hereby finds and determines that the activities and facilities of BioEnergy Hawaii, LLC, constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2016, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2016.

SECTION 6. Act 110, Session Laws of Hawaii 2009, is repealed.

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved June 8, 2011.)

ACT 90

S.B. NO. 1394

A Bill for an Act Relating to Hawaii Public Housing Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 356D-11, Hawaii Revised Statutes, is amended to read as follows:

“~~§§356D-11~~ **Development of property.** (a) The authority, in its own behalf or on behalf of any government, may:

- (1) Clear, improve, and rehabilitate property; and
- (2) Plan, develop, construct, and finance public housing projects.

(b) The authority may develop public land in an agricultural district subject to the prior approval of the land use commission when developing lands greater than five acres in size, and public land in a conservation district subject to the prior approval of the board of land and natural resources. The authority shall not develop state monuments, historical sites, or parks. When the authority proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth such purpose. The petition shall be conclusive proof that the intended use is a public use superior to that to which the land had been appropriated.

(c) The authority may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

(d) The authority shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any government agency for a federal grant, prevent the participation of the federal

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government in any government program, or impair any covenant between the government and the holder of any bond issued by the government.

(e) The authority may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration housing project designed to meet the needs of elders, disabled, displaced or homeless persons, low- and moderate-income persons, government employees, teachers, or university and college students and faculty.

(f) The authority may enter into contracts with eligible developers to develop public housing projects in exchange for mixed use development rights. Eligibility of a developer for an exchange pursuant to this subsection shall be determined pursuant to rules adopted by the authority in accordance with chapter 91.

As used in this subsection, "mixed use development rights" means the right to develop a portion of a public housing project for commercial use."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 9, 2011.)

ACT 91

H.B. NO. 1089

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to conform Hawaii income tax law to the Internal Revenue Code.

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For all taxable years beginning after December 31, [2009,] 2010, as used in this chapter, except as provided in section 235-2.35, “Internal Revenue Code” means subtitle A, chapter 1, of the federal Internal Revenue Code of 1986, as amended as of December 31, [2009,] 2010, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income, except those provisions of the Internal Revenue Code and federal public laws which, pursuant to this chapter, do not apply or are otherwise limited in application and except for the provisions of Public Law 109-001 which apply to section 170 of the Internal Revenue Code. The provisions of Public Law 109-001 to accelerate the deduction for charitable cash contributions for the relief of victims of the 2004 Indian Ocean tsunami are applicable for the calendar year that ended December 31, 2004, and the calendar year ending December 31, 2005.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and

- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.”

SECTION 3. Section 235-2.35, Hawaii Revised Statutes, is amended to read as follows:

“[§235-2.35] Operation of certain Internal Revenue Code provisions not operative under section 235-2.3. [Notwithstanding the meaning of “Internal Revenue Code” as that term is used in section [235-2.3], beginning April 1, 2010, the] The following sections of the federal Internal Revenue Code of 1986, as amended [as of April 1, 2010], shall be operative for purposes of this chapter:

- (1) Section 6041 as applicable to persons under section 6041(h) (with respect to information returns at the source for certain corporations);
- (2) Section 6038D (with respect to information with respect to foreign financial assets). With respect to persons required to report information under this section, section 6662(j) (with respect to imposition of accuracy-related penalties on underpayments) and section 6501(e)(1)(A)(ii) (with respect to limitations on assessment and collection) shall also be operative for purposes of this chapter and shall be applied consistently with the correlating provisions of §§ 231-36.6 and 235-111;
- (3) Section 6045B (with respect to returns relating to actions affecting basis in securities); and
- (4) Section 6050W (with respect to returns relating to payments made in settlement of payment card and third party network transactions).”

SECTION 4. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.4 Operation of certain Internal Revenue Code provisions; sections 63 to 530. (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, subject to the following:

- (1) Sections 63(c)(1)(B) (relating to the additional standard deduction), 63(c)(1)(C) (relating to the real property tax deduction), 63(c)(1)(D) (relating to the disaster loss deduction), 63(c)(1)(E) (relating to the motor vehicle sales tax deduction), 63(c)(4) (relating to inflation adjustments), 63(c)(7) (defining the real property tax deduction), 63(c)(8) (defining the disaster loss deduction), 63(c)(9) (defining the motor vehicle sales tax deduction), and 63(f) (relating to additional amounts for the aged or blind) of the Internal Revenue Code shall not be operative for purposes of this chapter;
- (2) Section 63(c)(2) (relating to the basic standard deduction) of the Internal Revenue Code shall be operative, except that the standard deduction amounts provided therein shall instead mean:
 - (A) \$4,400 in the case of:
 - (i) A joint return as provided by section 235-93; or
 - (ii) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
 - (B) \$3,212 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);

- (C) \$2,200 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (D) \$2,200 in the case of a married individual filing a separate return;

- (3) Section 63(c)(5) (limiting the basic standard deduction in the case of certain dependents) of the Internal Revenue Code shall be operative, except that the limitation shall be the greater of \$500 or such individual's earned income; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 68 (with respect to the overall limitation on itemized deductions) of the Internal Revenue Code shall be operative, except that sections 68(f) and 68(g) shall not be operative; provided that the thresholds shall be those that were operative for federal tax year 2009.

~~[(b)]~~ (c) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

~~[(e)]~~ (d) Section 85 (with respect to unemployment compensation) of the Internal Revenue Code shall be operative for purposes of this chapter, except that section 85(c) shall not be operative for purposes of this chapter.

~~[(d)]~~ (e) Section 108 (with respect to income from discharge of indebtedness) of the Internal Revenue Code shall be operative for purposes of this chapter, except that section 108(i) (relating to deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument) shall not be operative for purposes of this chapter.

~~[(e)]~~ (f) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(s) in effect for taxable year 1997.

~~[(f)]~~ (g) Section 132 (with respect to certain fringe benefits) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the provision in section 132(f)(2) that equalizes the dollar amounts for sections 132(f)(2)(A) and (B) after February 17, 2009, until January 1, 2011, shall not be operative and except that section 132(n) shall not apply to United States Department of Defense Homeowners Assistance Program payments authorized by the American Recovery and Reinvestment Act of 2009.

~~[(g)]~~ (h) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that provisions in section 163(d)(4)(B) (defining net investment income to exclude dividends), section 163(e)(5)(F) (suspension of applicable high-yield discount obligation (AHYDO) rules) and section 163(i)(1) as it applies to debt instruments issued after January 1, 2010, (defining AHYDO) shall not be operative for the purposes of this chapter.

~~[(h)]~~ (i) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that sections 164(a)(6), 164(b)(5), and 164(b)(6) shall not be operative for the purposes of this chapter.

~~[(i)]~~ (j) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the amount prescribed by sections 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty, and sections 165(h)(3)(A) and

165(h)(3)(B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters) of the Internal Revenue Code shall not be operative for the purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

~~[(f)]~~ (k) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that sections 168(j) (relating to property on Indian reservations), 168(k) (relating to the special allowance for certain property acquired during the period specified therein), 168(m) (relating to the special allowance for certain reuse and recycling property), and 168(n) (relating to the special allowance for qualified disaster assistance property) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(k)]~~ (l) Section 172 (with respect to net operating loss deductions) of the Internal Revenue Code shall be operative for purposes of this chapter, as further provided in section 235-7(d), except that sections 172(b)(1)(J) and 172(j) (both of which relate to qualified disaster losses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(4)]~~ (m) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except ~~[that provisions relating to:~~

- ~~(1) The increase of the maximum deduction to \$100,000 for taxable years beginning after 2002 and before 2008, and the increase of the maximum deduction to \$125,000 for taxable years beginning after 2006 and before 2011, in section 179(b)(1);~~
- ~~(2) The increase of the qualifying investment amount to \$400,000 for taxable years beginning after 2002 and before 2008, and the increase of the qualifying investment amount to \$500,000 for taxable years beginning after 2006 and before 2011, in section 179(b)(2);~~
- ~~(3) The increase of the maximum deduction to \$250,000 and the increase of the qualifying investment amount to \$800,000 for taxable years beginning in 2008 or 2009, in section 179(b)(7);]~~ as provided in this subsection:
 - (1) The aggregate cost provided in section 179(b)(1) which may be taken into account under section 179(a) for any taxable year shall not exceed \$25,000;
 - (2) The amount at which the reduction in limitation provided in section 179(b)(2) begins shall exceed \$200,000 for any taxable year; and
 - (3) The following shall not be operative for purposes of this chapter:
 - ~~[(4)]~~ (A) Defining section 179 property to include computer software in section 179(d)(1);
 - ~~[(5)]~~ (B) Inflation adjustments in section 179(b)(5);
 - ~~[(6)]~~ (C) Irrevocable election in section 179(c)(2); and
 - ~~[(7)]~~ (D) Special rules for qualified disaster assistance property in section 179(e);

~~shall not be operative for the purposes of this chapter].~~

~~[(m)]~~ (n) Section 198A (with respect to the expensing of qualified disaster assistance expenses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(n)]~~ (o) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain

pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

~~[(e)]~~ (p) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

~~[(p)]~~ (q) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that sections 265(b)(3)(G) and 265(b)(7) shall not be operative and that section 265 shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

~~[(e)]~~ (r) Section 382 (with respect to limitation on net operating loss carryforwards and certain built-in losses following ownership change) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 382(n) shall not be operative for purposes of this chapter.

~~[(t)]~~ (s) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 408A(d)(3)(A)(iii) shall not be operative for purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

~~[(s)]~~ (t) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

~~[(t)]~~ (u) In administering section 403 (with respect to taxation of employee annuities) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the annuity and used solely to obtain retirement credits under the state employees' retirement system shall not be treated as a rollover for purposes of section 403(b)(8)(A) of the Internal Revenue Code, and such funds shall be subject to income tax under this chapter.

~~[(u)]~~ (v) Section 451 (which provides general rules for taxable year of inclusion) of the Internal Revenue Code shall be operative, except that the provisions of sections 451(i)(3) and 451(i)(6), as they relate to a qualified electric utility, shall not be operative for purposes of this chapter.

~~[(v)]~~ (w) In administering section 457 (with respect to compensation plans of state and local governments and tax-exempt organizations) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the deferred compensation plan and used solely to obtain retirement credits under the state employees' retirement system shall not be treated as a rollover for purposes of section 457(e)(16)(A) of the Internal Revenue Code and such funds shall be subject to income tax under this chapter.

~~[(w)]~~ (x) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(x)]~~ (y) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

~~[(y)]~~ (z) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.

~~[(z)]~~ (aa) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

~~[(aa)]~~ (bb) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(bb)]~~ (cc) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that sections 529(c)(6) and 529(e)(3)(A)(iii) shall not be operative.

~~[(cc)]~~ (dd) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

ACT 92

SECTION 6. This Act shall take effect upon its approval; provided that the amendments made to section 235-2.4, Hawaii Revised Statutes, by section 4 of this Act shall not be repealed when section 235-2.4(a), Hawaii Revised Statutes, is repealed and reenacted on December 31, 2015, pursuant to section 6 of Act 60, Session Laws of Hawaii 2009.

(Approved June 9, 2011.)

ACT 92

S.B. NO. 1331

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304A-2007, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The report shall ~~also~~ include ~~all~~;

- (1) All expenditures in excess of each fund’s appropriation for each fiscal year[-]; and
- (2) For each fund, listed by program identification number, that has an unencumbered cash balance of \$1,000,000 or more or a cash deficit of \$1,000,000 or more at the end of the previous fiscal year, where that balance or deficit is greater than twenty-five per cent of the previous fiscal year’s expenditures, the estimated:
 - (A) Expenses for the current fiscal year;
 - (B) Revenues for the current fiscal year; and
 - (C) Unencumbered cash balance or cash deficit at the end of the current fiscal year.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011; provided that section 1 shall be repealed on June 30, 2016, and section 304A-2007(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved June 9, 2011.)

ACT 93

S.B. NO. 1281

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 51, Session Laws of Hawaii 2004, as amended by Act 221, Session Laws of Hawaii 2004, required the implementation of a new allocation method, the weighted student formula, to distribute funds to schools based on the characteristics of the students. Act 51, as amended, also created the committee on weights whose responsibility it is to recommend a formula and various weights of characteristics to the board of education. With six years of experience, it has become apparent that, to provide stability and predictability for the principals and the school community councils, an improved practice would be to have the committee on weights meet every odd-numbered year rather than each year. Schools that are developing academic and financial plans to improve

student achievement need to be assured of constant funding over a two-year period.

The purpose of this Act is to require the committee on weights to meet no less than once every odd-numbered year, rather than every year.

SECTION 2. Section 302A-1303.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the department of education the committee on weights to develop a weighted student formula pursuant to section 302A-1303.6. The committee shall:

- (1) Create a list of student characteristics that will be weighted;
- (2) Create a system of weights based upon the student characteristics that may be applied to determine the relative cost of educating any student;
- (3) Determine specific student weights, including their unit value;
- (4) Determine which moneys shall be included in the amount of funds to be allocated through the weighted student formula;
- (5) Recommend a weighted student formula to the board of education;
- (6) Perform any other function that may facilitate the implementation of the weighted student formula; and
- (7) Meet not less than [~~annually~~] once every odd-numbered year, to review the weighted student formula and, if the committee deems it necessary, recommend a new weighted student formula for adoption by the board of education.”

SECTION 3. Section 302A-1303.6, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1303.6 Weighted student formula.** Based upon recommendations from the committee on weights, the board of education, not less than [~~annually~~] once every odd-numbered year, shall adopt a weighted student formula for the allocation of moneys to public schools that takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools. Principals shall expend moneys provided to the principals’ schools. This section shall only apply to charter schools for fiscal years in which the charter schools elect pursuant to section 302B-13 to receive allocations according to the weighted student formula.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved June 9, 2011.)

ACT 94

H.B. NO. 773

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Saint Louis School.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$40,000,000, in one or more series, for the purpose of assisting Saint Louis School, a Hawaii not-for-profit corporation, to finance or refinance the planning, construction, improvement, and equipping of its educational facilities in the State of Hawaii. The legislature hereby finds and determines that the financing or refinancing of the planning, construction, improvement, and equipping constitute a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit private nonsectarian and sectarian elementary school, secondary school, college, or university serving the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist a not-for-profit private nonsectarian and sectarian elementary school, secondary school, college, or university serving the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2016, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2016.

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved June 9, 2011.)

ACT 95

A Bill for an Act Relating to the Budget of the Office of Hawaiian Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to appropriate funds for the biennial budget of the office of Hawaiian affairs. This Act shall be known and may be cited as the "Office of Hawaiian Affairs Appropriations Act of 2011".

SECTION 2. Unless otherwise clear from the context, as used in this Act: "Program ID" means the unique identifier of the specific program, and consists of the abbreviation for the office of Hawaiian affairs followed by a designated number for the program.

"Means of financing", or "MOF", means the source from which funds are appropriated or authorized, as the case may be, to be expended for the programs and projects specified in this Act. Letter symbols following appropriations have the following meanings:

A: General Funds

T: Trust Funds

"Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

SECTION 3. The following sums, or so much thereof as may be necessary to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 2011 and ending June 30, 2013. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceiling indicated for each year, except as provided elsewhere in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
Hawaiian Affairs					
1.	OHA150	- OFFICE OF THE TRUSTEES			
	OPERATING		OHA	0.63 * 28,435 A	0.63 * 28,435 A
			OHA	4.37 * 275,687 T	4.37 * 275,687 T
2.	OHA160	- ADMINISTRATION			
	OPERATING		OHA	7.60 * 700,159 A	7.60 * 700,159 A
			OHA	32.40 * 2,861,727 T	32.40 * 2,861,727 T
3.	OHA175	- BENEFICIARY ADVOCACY			
	OPERATING		OHA	2.86 * 1,642,278 A	2.86 * 1,642,278 A
			OHA	14.14 * 2,673,433 T	14.14 * 2,673,433 T

SECTION 4. Provided that the general fund appropriations in section 3 of this Act shall be expended by the office of Hawaiian affairs.

SECTION 5. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$415,000 in general funds and \$415,000 in trust funds for fiscal year 2011-2012 and the sum of \$415,000 in general funds and \$415,000 in trust funds for fiscal year 2012-2013 shall provide for social services to office of Hawaiian affairs beneficiaries to include information and referral services, case management and counseling, establishment of individual development accounts, financial literacy, and financial assistance. Referral services include those relating to education assistance, employment and income security, individual and family care, health needs, housing, legal services, genealogy research, business assistance, and general information; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 6. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$615,570 in general funds and \$615,570 in trust funds for fiscal year 2011-2012 and the sum of \$615,570 in general funds and \$615,570 in trust funds for fiscal year 2012-2013 shall provide for educational enrichment programs for native Hawaiian children in grades K through 12 throughout the State. Program activities are to be designed to optimize learning for Hawaiian students and are intended to develop a stronger interest in learning, connect learning and education to one's Hawaiian identity, and explore possible educational, career, and academic goals the students may not have considered; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 7. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$524,400 in general funds and \$524,400 in trust funds for fiscal year 2011-2012 and the sum of \$524,400 in general funds and \$524,400 in trust funds for fiscal year 2012-2013 shall provide legal services and legal representation to office of Hawaiian affairs beneficiaries for: the assertion and defense of quiet title actions; assistance with ahupua'a and kuleana tenant rights, including rights of access and rights to water; land title assistance, including review of title and genealogy; preservation of traditional and customary practices; protection of culturally significant places; and preservation of native Hawaiian land trust entitlements; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 8. Provided that whenever the need arises, the board of trustees of the office of Hawaiian affairs or their designee is authorized to transfer sufficient funds and positions between programs for operating purposes; provided further that these transfers shall not be inconsistent with legislative intent; and provided further that a report of these fund transfers shall be made to the legislature no later than the end of the 2012 and 2013 fiscal years.

SECTION 9. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific ap-

propriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 10. In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the board of trustees of the office of Hawaiian affairs is hereby authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 11. This Act shall take effect on July 1, 2011.

(Approved June 9, 2011.)

ACT 96

H.B. NO. 1036

A Bill for an Act Relating to Federal Tax Qualification Requirements for the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The employees' retirement system of the State of Hawaii is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code. The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Public Law No. 110-245, imposes requirements on tax-qualified retirement plans regarding benefits payable to the survivors of members who die while performing qualified military service.

The legislature finds that although existing provisions of chapter 88, Hawaii Revised Statutes, provide the benefits that the HEART Act requires, chapter 88, Hawaii Revised Statutes, must be amended to include the specific wording required by the HEART Act to maintain the tax-qualified status of the employees' retirement system. The legislature also finds that chapter 88, Hawaii Revised Statutes, should be amended to address in greater detail the requirement of section 401(a)(9) of the Internal Revenue Code that qualified retirement benefits commence no later than April 1 of the calendar year following the calendar year in which an employees' retirement system member terminates employment or attains age seventy and one-half, whichever is later.

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§88- Commencement of benefits on required beginning date. (a) The purpose of this section is to provide for distribution of benefits in accordance with a reasonable and good faith interpretation of section 401(a)(9) of the Internal Revenue Code. Section 401(a)(9) of the Internal Revenue Code requires that the “entire interest” of a member be distributed or that distribution of the member's benefits begin no later than the member's “required beginning date”.

(b) For the purposes of this section, “required beginning date” means April 1 of the calendar year following the calendar year in which a member terminates service or attains age seventy and one-half, whichever is later.

(c) A member or former member's accumulated contributions or hypothetical account balance, as defined in section 88-311, shall be paid to the member or former member, or payment of the benefits payable under part II, VII, or VIII of this chapter shall commence, no later than the member's or former member's required beginning date. The payment or payments shall be made on,

or beginning no later than, the member's or former member's required beginning date even if the member or former member does not apply for payment or file a retirement application.

- (d) If, by a member's or former member's required beginning date:
 - (1) The member or former member's accumulated contributions or hypothetical account balance, as defined in section 88-311, are not paid to the member or former member; or
 - (2) Payment of the benefits payable under part II, VII, or VIII of this chapter do not commence,

the system shall pay the service retirement benefits for which the member or former member is eligible pursuant to part II, VII, or VIII of this chapter, as applicable, retroactive to the member's or former member's required beginning date with regular interest.

(e) If the system does not receive a written election from the member or former member under section 88-83, 88-283, or 88-333, as applicable, prior to the later of the member's or former member's required beginning date or sixty days following the receipt by the member or former member of notice from the system that the member or former member is required to make an election, the following election shall be deemed to have been made as of the member or former member's required beginning date:

- (1) If the member or former member is unmarried or has no civil union partner or reciprocal beneficiary, the member or former member shall be deemed to have elected the maximum retirement allowance; or
- (2) If the member or former member is married or has a civil union partner or reciprocal beneficiary, the member or former member shall be deemed to have elected option 3 under section 88-83, or option A under section 88-283, as applicable, and to have designated the member's or former member's spouse, civil union partner, or reciprocal beneficiary as the member's or former member's beneficiary;

provided that if the system receives the written election after the member's or former member's required beginning date, but within sixty days following receipt by the member or former member of notice from the system that the member or former member is required to make the election, the written election shall apply, and the member's or former member's retirement benefit shall be recomputed, based on the written election, retroactive to the member or former member's required beginning date. The amount of any underpayment resulting from recomputing the benefit shall bear regular interest. If recomputing the benefit results in an overpayment, payments shall be adjusted so that the actuarial equivalent of the benefit to which the member or former member was correctly entitled shall be paid.

(f) If the system does not have current information about the member's or former member's marital, civil union, or reciprocal beneficiary status at the time of a deemed election, the following presumptions shall apply:

- (1) If the member or former member was married or had a civil union partner or reciprocal beneficiary at the time the member or former member last provided information to the system about the member's or former member's marital, civil union, or reciprocal beneficiary status, it shall be presumed that the member or former member is still married to the same spouse, is in the same civil union partnership, or is in the same reciprocal beneficiary relationship. If the system does not have information as to the age of the spouse, civil union partner, or reciprocal beneficiary, the spouse, civil union

partner, or reciprocal beneficiary shall be presumed to be forty years younger than the member or former member for purposes of computing the member's or former member's benefit; and

- (2) If the member or former member was unmarried and did not have a civil union partner or reciprocal beneficiary at the time the member or former member last provided information to the system about the member or former member's marital status, it shall be presumed that the member or former member is married and that the spouse of the member or former member is forty years younger than the member or former member.

(g) The presumptions in subsection (f) shall cease to apply when the member or former member provides the system with current information as to the member's or former member's marital, civil union, or reciprocal beneficiary status and the age of the member or former member's spouse, civil union partner, or reciprocal beneficiary, if any, on the member's or former member's required beginning date. The information shall be provided in a form satisfactory to the system. At that time, the member's or former member's retirement allowance shall be recomputed, retroactive to the member's or former member's required beginning date, based on the updated information; provided that, except as provided in subsection (e), the member or former member shall not be permitted to change the member's or former member's retirement allowance option election or beneficiary; provided further that the benefit being paid to any member or former member who, on the member's or former member's required beginning date, was unmarried and did not have a civil union partner or reciprocal beneficiary, but who was deemed to elect option 3 or option A with an assumed spouse, civil union partner, or reciprocal beneficiary, shall be converted to the maximum retirement allowance retroactive to the member's or former member's required beginning date. The amount of any underpayment resulting from recomputing the benefit shall bear regular interest. If recomputing the benefit results in an overpayment, payments shall be adjusted so that the actuarial equivalent of the benefit to which the member or former member was correctly entitled shall be paid.

(h) If the system cannot locate the member or former member, the member's or former member's benefit shall be payable only until the end of the member's or former member's life expectancy, as determined at the member's or former member's required beginning date. If the member or former member has not by that time made a claim for benefits, the member or former member shall be deemed to be deceased at that time. Interest under subsection (d) shall cease on benefits presumed to be abandoned property, pursuant to part I of chapter 523A, upon payment of the property to the administrator under part I of chapter 523A.

(i) Rules necessary for the purposes of this section shall be adopted as provided in section 88-22.5."

SECTION 3. Section 88-22.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The system shall be administered in accordance with the requirements of section 401(a)(1), (2), (8), (9), (25), ~~and~~ (31), and (37) of the Internal Revenue Code of 1986, as amended. Without limiting the generality of the foregoing and notwithstanding any provision of chapter 88 to the contrary:

- (1) Prior to the satisfaction of all liabilities with respect to members and their beneficiaries, no part of the corpus or income of the system shall be used for or diverted to purposes other than for the exclusive benefit of members and their beneficiaries. The payment of

reasonable expenses from the expense fund for the administration of the system in accordance with section 88-116 shall be deemed to be for the benefit of members and their beneficiaries;

- (2) Benefits forfeited by a member for any reason shall not be applied to increase the benefits a member or beneficiary would otherwise receive under the system;
- (3) In accordance with ~~section 88-~~ and rules adopted by the board of trustees, the entire interest of a member shall be distributed or distribution shall begin no later than the member's "required beginning date", as defined in section 401(a)(9) of the Internal Revenue Code of 1986, as amended;
- (4) In accordance with rules adopted by the board of trustees, a member or beneficiary may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an "eligible rollover distribution" paid in a "direct rollover" to an "eligible retirement plan", as ~~[such]~~ those terms are defined in section 401(a)(31) of the Internal Revenue Code of 1986, as amended; ~~[and]~~
- (5) In the event of the termination of or complete discontinuance of employer contributions to the system, the rights of all members to benefits accrued as of the date of ~~[such]~~ the termination or discontinuance, to the extent then funded, shall be nonforfeitable~~[-]~~; and
- (6) In the case of a member who dies while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code, the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under this chapter had the member resumed and then terminated employment on account of death; provided that this paragraph shall not limit the rights to which a member's designated beneficiary, spouse, civil union partner, reciprocal beneficiary, or children are otherwise entitled by this chapter; provided further that the legislature finds that section 88-137 provides the benefits required by this paragraph."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 9, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 97

S.B. NO. 570

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The purpose of this Act is to address taxation. More specifically, this Act:

- (1) Makes the deduction for state taxes paid, inoperative for:
 - (A) An individual filer with a federal adjusted gross income of \$100,000 or more;
 - (B) A joint or surviving spouse filer with a federal adjusted gross income of \$200,000 or more; and
 - (C) A head of household with a federal adjusted gross income of \$150,000 or more;
- (2) Limits the amount of itemized deductions that may be claimed by the same taxpayers; and
- (3) Delays the standard deduction and personal exemption increases approved under Act 60, Session Laws of Hawaii, 2009, and makes the increases permanent.

PART II

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that [sections]:

- (1) Sections 164(a)(6) and 164(b)(6) shall not be operative for the purposes of this chapter[-]; and
- (2) The deductions under sections 164(a)(3) and 164(b)(5) shall not be operative for corporate taxpayers and shall be operative only for the following individual taxpayers:
 - (A) A taxpayer filing a single return or a married person filing separately with a federal adjusted gross income of less than \$100,000;
 - (B) A taxpayer filing as a head of household with a federal adjusted gross income of less than \$150,000; and
 - (C) A taxpayer filing a joint return or as a surviving spouse with a federal adjusted gross income of less than \$200,000.”

PART III

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§235- Itemized deductions; limitations.** Notwithstanding any other law to the contrary, itemized tax deductions claimed pursuant to this chapter shall not exceed the lesser of:

- (1) The limitation on itemized deductions under section 68 of the Internal Revenue Code; or
- (2) Any of the following that may be applicable:
 - (A) \$25,000 for a taxpayer filing a single return or a married person filing separately with a federal adjusted gross income of \$100,000 or more;
 - (B) \$37,500 for a taxpayer filing as a head of household with a federal adjusted gross income of \$150,000 or more; and
 - (C) \$50,000 for a taxpayer filing a joint return or as a surviving spouse with a federal adjusted gross income of \$200,000 or more.”

PART IV

SECTION 4. Act 60, Session Laws of Hawaii 2009, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect upon approval[;]; provided that:

- (1) Section 2 shall apply to taxable years beginning after December 31, 2008;
- (2) Sections 1 and 3 shall apply to taxable years beginning after December 31, [2010;] 2012; and
- (3) On December 31, 2015, [this Act] section 2 shall be repealed and [sections 235-2.4(a);] section 235-51(a), (b), and (c), [and 235-54(a);] Hawaii Revised Statutes, shall be reenacted in the form in which [they] it read on the day before the effective date of this Act.”

PART V

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2011, and shall apply to taxable years beginning after December 31, 2010; provided that:

- (1) Section 235- , Hawaii Revised Statutes, in section 3 of this Act shall be repealed on January 1, 2016, and shall apply to taxable years beginning after December 31, 2010, but not to taxable years beginning after December 31, 2015; and
- (2) Part IV shall take effect retroactively to December 30, 2010.

(Approved June 9, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 98

S.B. NO. 1483

A Bill for an Act Relating to Hawaii Revised Statutes Section 514B-153(e).

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514B-153, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The managing agent, resident manager, or board shall keep an accurate and current list of members of the association and their current addresses, and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board, and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the managing agent or resident manager or the board a duly executed and acknowledged affidavit stating that the list:

- (1) Will be used by the owner personally and only for the purpose of soliciting votes or proxies[;] or [for] providing information to other owners with respect to association matters; and

- (2) Shall not be used by the owner or furnished to anyone else for any other purpose.

A board may prohibit commercial solicitations.

Where the condominium project or any units within the project are subject to a time share plan under chapter 514E, the association shall only be required to maintain in its records the name and address of the time share association as the representative agent for the individual time share owners unless the association receives a request by a time share owner to maintain in its records the name and address of the time share owner.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 9, 2011.)

ACT 99

H.B. NO. 1070

A Bill for an Act Relating to Conditional Release Timeframes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend the law to establish a specific time frame for an order of post-acquittal conditional release when the defendant is charged with a petty misdemeanor, misdemeanor, or violation.

SECTION 2. Section 704-411, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall ~~make an order as follows:~~ order that:

- (a) The ~~[court shall order the]~~ defendant ~~[to]~~ shall be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:
- (i) Is affected by a physical or mental disease, disorder, or defect;
 - (ii) Presents a risk of danger to self or others; and
 - (iii) Is not a proper subject for conditional release;
- provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant’s treatment needs and the need to prevent harm to the person confined and others. The county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant ~~[which]~~ that have been adjudicated by the acceptance of a plea of guilty or ~~[no contest,]~~ nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or ~~[no contest]~~ nolo contendere made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments~~;~~ with the exception of]; provided that expunged records, records of

or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center[-] shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation [ef] or who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law;

- (b) The ~~[court shall order the]~~ defendant ~~[to]~~ shall be granted conditional release with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition[-~~or~~]. For any defendant granted conditional release pursuant to this paragraph, and who was charged with a petty misdemeanor, misdemeanor, or violation, the period of conditional release shall be no longer than one year; or
- (c) The ~~[court shall order the]~~ defendant shall be discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents a danger to self or others and is not in need of care, supervision, or treatment.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved June 9, 2011.)

ACT 100

S.B. NO. 1241

A Bill for an Act Relating to Conveyance Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

“§247-3 Exemptions. The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;

- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity; and
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership]; and
- ~~(17) Any document or instrument conveying real property to any non-profit or for-profit organization that has been certified by the Hawaii~~

housing finance and development corporation for low-income housing development].”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 9, 2011.)

ACT 101

H.B. NO. 801

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify the department of taxation’s subpoena authority for civil and criminal tax investigations.

SECTION 2. Section 231-7, Hawaii Revised Statutes, is amended to read as follows:

“§231-7 ~~[Hearings]~~ Audits, investigations, hearings, and subpoenas. (a) The director of taxation, and any representative of the director duly authorized by the director, may conduct any ~~[inquiry,]~~ civil audit or criminal investigation, investigation, or hearing, relating to any assessment, or the amount of any tax, or the collection of any delinquent tax, including any ~~[inquiry]~~ audit or investigation into the financial resources of any delinquent taxpayer or the collectability of any delinquent tax.

(b) The director of taxation or other person conducting hearings may administer oaths and take testimony under oath relating to the matter of [inquiry or] audit, investigation, [and] or hearing.

(c) The director of taxation or representative of the director duly authorized by the director, when conducting a civil audit, investigation, or hearing may subpoena witnesses and require the production of books, papers, documents, [and records pertinent to such inquiry,] other designated objects, or any other record however maintained, including those electronically stored, that are relevant or material to the civil audit, investigation, or hearing; provided that the director of taxation or deputy director of taxation shall give written approval for the issuance of a subpoena only after a review of the appropriateness of the issuance. A subpoena issued under this subsection:

- (1) Shall state that the subpoena is issued by the department and shall command each person to whom it is directed to attend and give testimony at the time and place specified, and may also command the person to whom the subpoena is directed to produce books, papers, documents, or other objects specifically designated;
- (2) May be served at any place within the State by an investigator appointed pursuant to section 231-4.3 or any other representative of the director duly authorized by the director;
- (3) Shall require attendance of the person only in the county wherein the person is served with the subpoena or at any other place as is agreed upon by the person and the department; provided that if the subpoena is served in a county other than that in which the person resides, is employed, or transacts the person’s business in person, the

department shall bear the person's expenses for travel to and attendance at the place named in the subpoena to the same extent as provided by the rules of court other than the expenses of the taxpayer or the taxpayer's witnesses, officers, directors, agents, or employees: and

- (4) Shall contain a short, plain statement of the person's rights and the procedure for enforcing and contesting the subpoena.

[(e)] If any person disobeys any process or, having appeared in obedience thereto, refuses to answer pertinent questions put to the person by the director or other person conducting the civil audit, investigation, or hearing, or to produce any books, papers, documents, objects, or records pursuant thereto, the director [~~or other person conducting the hearing~~] may apply to the circuit court of the circuit wherein the [~~inquiry or~~] civil audit, investigation, or hearing is being conducted, or to any judge of the court, setting forth the disobedience to process or refusal to answer, and the court or judge shall cite the person to appear before the court or judge to answer the questions or to produce the books, papers, documents, objects, or records~~], and upon the person's refusal so to do~~; provided that the court, upon a motion promptly made by the person, may quash or modify the subpoena if compliance would be unreasonable or oppressive or would violate any privilege the person would be entitled to exercise in a court proceeding. If the person fails or refuses to produce the subpoenaed books, papers, documents, objects, or record, the court shall institute a contempt proceeding against the person, at which time the court shall determine whether good cause is shown for the failure to obey the subpoena or the refusal to testify; provided that the court, on a motion promptly made, may quash or modify the subpoena if compliance would be unreasonable or oppressive or would violate any privilege the person would be entitled to exercise in a court proceeding. In the event that no good cause is shown, the court does not quash or modify the subpoena, and the person fails or refuses to comply with the subpoena, then the court shall commit the person to jail until the person testifies, but not for a longer period than sixty days. Notwithstanding the serving of the term of commitment by any person, the director may proceed in all respects as if the witness had not previously been called upon to testify. Witnesses (other than the taxpayer or the taxpayer's [~~or its~~] officers, directors, agents, and employees) shall be allowed their fees and mileage as authorized in cases in the circuit courts, to be paid on vouchers of the department of taxation, from any moneys available for the expenses of the department.

(d) Subject to the privileges applicable to any witness in this State, the director of taxation or any representative of the director duly authorized by the director, when conducting a criminal investigation, may subpoena witnesses, examine witnesses under oath, and require the production of any books, papers, documents, other designated objects, or any other record however maintained, including those electronically stored, that are relevant or material to the investigation; provided that the director of taxation or deputy director of taxation shall give written approval for the issuance of a subpoena only after a review of the appropriateness of the issuance. A subpoena issued under this subsection:

- (1) Shall state that the subpoena is issued by the department and shall command each person to whom it is directed to attend and give testimony at the time and place specified, and may command the person to whom it is directed to produce books, papers, documents, or other objects specifically designated;
- (2) May be served at any place within the State by an investigator appointed pursuant to section 231-4.3 or any other law enforcement official with the powers of a police officer;

- (3) Shall require attendance of the person only in the county wherein the person is served with the subpoena or at any other place agreed upon by the person and the department; provided that if the subpoena is served in a county other than that in which the person resides, is employed, or transacts the person's business in person, the department shall bear the person's expenses for travel to and attendance at the place named in the subpoena to the same extent as provided by the rules of court; and
- (4) Shall contain a short, plain statement of the person's rights and the procedure for enforcing and contesting the subpoena.

Upon application by the director, a circuit court of the county wherein the person resides or is found may compel obedience to the subpoena; provided that the court, on a motion promptly made, may quash or modify the subpoena if compliance would be unreasonable or oppressive or would violate any privilege the witness may be entitled to exercise in a court proceeding.

~~[(d)]~~ (e) Any subpoena issued under this section that does not identify the person with respect to whose liability, audit, or investigation the subpoena is issued may be served on ~~[any person]~~ the intended recipient only after a court proceeding in which the director or another person establishes that:

- (1) The subpoena relates to the liability, audit, or investigation of a particular person or ascertainable group or class of persons;
- (2) There is a reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with any provision of title 14; and
- (3) The information sought to be obtained from the examination of records or testimony and the identity of the person or persons with respect to whose liability the subpoena is issued is not readily available from other sources.

(f) The department shall pay to a financial institution that is served a subpoena issued under this section a fee for reimbursement of the institution's costs as are necessary and that have been directly incurred by or on behalf of the institution in searching for, reproducing, or transporting books, papers, documents, or other objects designated in the subpoena. Reimbursement shall be paid at the rate of \$15 per hour for research and 50 cents per page for reproduction.

(g) A person or entity that is compelled to testify or produce documents, information, or other items by a subpoena issued pursuant to an audit, investigation, or hearing pertaining to another person or entity shall not be liable for damages arising from compliance with the subpoena.

~~[(e)]~~ (h) The provisions of this section are in addition to all other provisions of law, and apply to any tax within the jurisdiction of the department.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011, and shall apply to any subpoena issued on or after the effective date of this Act.

(Approved June 9, 2011.)

ACT 102

H.B. NO. 828

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 231-96, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§231-96[.] Failure to record transaction [by receipt]. (a) It shall be unlawful to conduct more than ten taxable business transactions per day in cash and fail to [provide]:~~

- ~~(1) Offer a receipt or other record of the transaction [when the means for issuing a receipt or recording the transaction are available.]; and~~
- ~~(2) Maintain a contemporaneously generated record of all business transactions conducted each day,~~

~~whether handwritten or generated by a manually operated or electronic cash register. Each day a person is in violation of this section shall be treated as a separate violation.~~

~~[Any] (b) Except as provided in subsection (c), any person who violates this section shall be subject to a fine not to exceed \$1,000; provided that if the person is a cash-based business, the fine shall not exceed \$2,000.~~

~~(c) If the person, including a cash-based business, is otherwise in compliance with title 14 at the time of violation of this section, the fine for a violation of this section shall be commensurate with the violation, as determined by the department in accordance with rules adopted pursuant to chapter 91.~~”

SECTION 2. Section 231-97, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved June 9, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 103

S.B. NO. 1186

A Bill for an Act Relating to the Transient Accommodations Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237D-2, Hawaii Revised Statutes, is amended to read as follows:

“§237D-2 Imposition and rates. (a) There is levied and shall be assessed and collected each month a tax of:

- (1) Five per cent for the period beginning on January 1, 1987, to June 30, 1994;
- (2) Six per cent for the period beginning July 1, 1994, to December 31, 1998; and
- (3) 7.25 per cent for the period beginning on January 1, 1999, and thereafter;

on the gross rental or gross rental proceeds derived from furnishing transient accommodations.

(b) There is levied and shall be assessed and collected each month an additional:

- (1) One per cent for the period beginning July 1, 2009, to June 30, 2010; and
- (2) Two per cent for the period beginning July 1, 2010, to June 30, 2015;

on the gross rental or gross rental proceeds derived from furnishing transient accommodations. The rate levied and assessed under this subsection shall be additional to the rate levied and assessed under ~~[section 237D-2(a)(3)-]~~ subsection (a)(3).

(c) There is levied and shall be assessed and collected each month a daily tax of \$10 for every transient accommodation that is furnished on a complimentary or gratuitous basis, or otherwise at no charge, including transient accommodations furnished as part of a package.

~~[(e)] (d)~~ Every operator shall pay to the State the tax imposed by subsections (a) ~~[and], (b), and (c), as applicable,~~ as provided in this chapter.

~~[(d)] (e)~~ There is levied and shall be assessed and collected each month, on the occupant of a resort time share vacation unit, a transient accommodations tax of 7.25 per cent on the fair market rental value.

~~[(e)] (f)~~ Every plan manager shall be liable for and pay to the State the transient accommodations tax imposed by subsection ~~[(d)] (e)~~ as provided in this chapter. Every resort time share vacation plan shall be represented by a plan manager who shall be subject to this chapter.”

SECTION 2. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Revenues collected under this chapter, except for revenues collected under section 237D-2(b), shall be distributed as follows, with the excess revenues to be deposited into the general fund:

- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center enterprise special fund established under section 201B-8; provided that beginning January 1, 2002, if the amount of the revenue collected under this paragraph exceeds \$33,000,000 in any calendar year, revenues collected in excess of \$33,000,000 shall be deposited into the general fund;
- (2) 34.2 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section 201B-11 for tourism promotion and visitor industry research; provided that for any period beginning on July 1, 2011, and ending on June 30, 2015, no more than \$69,000,000 per fiscal year shall be deposited into the tourism special fund established under section 201B-11; and provided further that beginning on July 1, 2002, of the first \$1,000,000 in revenues deposited:

- (A) Ninety per cent shall be deposited into the state parks special fund established in section 184-3.4; and
- (B) Ten per cent shall be deposited into the special land and development fund established in section 171-19 for the Hawaii statewide trail and access program;

provided that of the 34.2 per cent, 0.5 per cent shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; provided further that of the revenues remaining in the tourism special fund after revenues have been deposited as provided in this paragraph and except for any sum authorized by the legislature for expenditure from revenues subject to this paragraph, beginning July 1, 2007, funds shall be deposited into the tourism emergency trust fund, established in section 201B-10, in a manner sufficient to maintain a fund balance of \$5,000,000 in the tourism emergency trust fund; and

- (3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent[-]; provided that for any period beginning on July 1, 2011, and ending on June 30, 2015, the total amount transferred to the counties shall not exceed \$93,000,000 per fiscal year.

Revenues collected under section 237D-2(b) shall be deposited into the general fund. All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011; provided that section 2 of this Act shall be repealed on June 30, 2015, and section 237D-6.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2009, pursuant to Act 61, Session Laws of Hawaii 2009.

(Approved June 9, 2011.)

ACT 104

H.B. NO. 1039

A Bill for an Act Relating to Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Act 33, Special Session Laws of Hawaii 2009, sought to provide the department of transportation with the discretion and flexibility to provide relief to various airport concessionaires due to sudden, extraordinary, and severe economic events. The legislature recognized that the department of transportation’s relief efforts were not fair to all concessionaires, in that some concessionaires had a self-adjusting eighty-five per cent guaranteed rent adjusting formula that provided relief for adverse economic events. Other conces-

sionaires had a guaranteed rent formula that does not allow for fluctuations in economic circumstances.

The legislature finds that the issues prompting the enactment of Act 33 have not been completely resolved as to all airport concessions, so inequities continue among various concessions. In addition, as a result of the recent devastating tsunami and related events taking place in Japan, a number of airport concessionaires are or will experience a sudden, extraordinary, and severe economic hardship as they do not have the same self-adjusting relief provisions of other airport concessionaires. It is estimated that these less fortunate concessions could experience a loss of revenues of about twenty-five per cent for twelve months or longer or until the number of visitors from Japan returns to the level that existed prior to the recent tsunami. Those gross revenue losses would be devastating to an airport concessionaire lacking the self-adjusting rent formula of other concessionaires.

The purpose of this part is to provide rent relief to airport concessionaires that have a guaranteed rent formula with the State.

SECTION 2. Act 33, Special Session Laws of Hawaii 2009, is amended as follows:

1. By adding a new section to read:

“SECTION 2A. The governor, or the director of transportation if so directed by the governor, shall have the discretion and authority to provide additional relief to airport concessionaires that do not have a self-adjusting lease formula as of March 31, 2011.”

2. By amending section 6 to read:

“SECTION 6. This Act shall take effect on July 1, 2009, and shall be repealed on ~~[July 1, 2011.]~~ July 1, 2013.”

PART II

SECTION 3. Section 251-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of ~~[\$2]~~ \$7.50 a day, except that ~~[for the period of September 1, 1999, to August 31, 2011.]~~ after June 30, 2012, the tax shall be \$3 a day, or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall be levied upon the lessor; provided that the tax shall not be levied on the lessor if:

- (1) The lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired; and
- (2) A record of the repair order for the vehicle is retained either by the lessor for two years for verification purposes or by a motor vehicle repair dealer for two years as provided in section 437B-16.”

SECTION 4. Section 251-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§251-5]]~~ **Remittances.** All remittances of surcharge taxes imposed under this chapter shall be made by cash, bank draft, cashier’s check, money order, or certificate of deposit to the office of the taxation district to which the return was transmitted. The department shall deposit the moneys into the state treasury to the credit of the state highway fund~~[-];~~ provided that of the rental

motor vehicle surcharge taxes assessed and collected pursuant to section 251-2(a), the equivalent of \$4.50 of the tax assessed and collected per day shall be deposited into the state treasury to the credit of the general fund.”

SECTION 5. Section 261-7, Hawaii Revised Statutes, is amended to read as follows:

“§261-7 Operation and use privileges. (a) In operating an airport or air navigation facility owned or controlled by the department of transportation, or in which it has a right or interest, the department may enter into contracts, leases, licenses, and other arrangements with any person:

- (1) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;
- (2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility;
- (3) Making available services, facilities, goods, commodities, or other things to be furnished by the department or its agents at the airport or air navigation facility; or
- (4) Granting the use and occupancy on a temporary basis by license or otherwise any portion of the land under its jurisdiction which for the time being may not be required by the department so that it may put the area to economic use and thereby derive revenue therefrom.

All the arrangements shall contain a clause that the land may be repossessed by the department when needed for aeronautics purposes upon giving the tenant temporarily occupying the same not less than thirty days' notice in writing of intention to repossess.

(b) Except as otherwise provided in this section, in each case mentioned in subsection (a)(1), (2), (3), and (4), the department may establish the terms and conditions of the contract, lease, license, or other arrangement, and may fix the charges, rentals, or fees for the privileges, services, or things granted, conferred, or made available, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature. Such charges shall be reasonable and uniform for the same class of privilege, service, or thing.

(c) The department shall enter into a contract with no more than one person (“contractor”) for the sale and delivery of in-bond merchandise at Honolulu International Airport, in the manner provided by law. The contract shall confer the right to operate and maintain commercial facilities within the airport for the sale of in-bond merchandise and the right to deliver to the airport in-bond merchandise for sale to departing foreign-bound passengers.

The department shall grant the contract pursuant to the laws of this State and may take into consideration:

- (1) The payment to be made on in-bond merchandise sold at Honolulu International Airport and on in-bond merchandise displayed or sold elsewhere in the State and delivered to the airport;
- (2) The ability of the applicant to comply with all federal and state rules and regulations concerning the sale and delivery of in-bond merchandise; and
- (3) The reputation, experience, and financial capability of the applicant.

The department shall actively supervise the operation of the contractor to ensure its effectiveness. The department shall develop and implement such guidelines as it may find necessary and proper to actively supervise the opera-

tions of the contractor, and shall include guidelines relating to the department's review of the reasonableness of contractor's price schedules, quality of merchandise, merchandise assortment, operations, and service to customers.

Apart from the contract described in this subsection, the department shall confer no right upon nor suffer nor allow any person to offer to sell, sell, or deliver in-bond merchandise at Honolulu International Airport; provided that this section shall not prohibit the delivery of in-bond merchandise as cargo to the Honolulu International Airport.

(d) The department, by contract, lease, or other arrangement, upon a consideration fixed by it, may grant to any qualified person the privilege of operating, as agent of the State or otherwise, any airport owned or controlled by the department; provided that no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under subsection (a).

(e) The department may fix and regulate, from time to time, reasonable landing fees for aircraft, including the imposition of landing surcharges or differential landing fees, and other reasonable charges for the use and enjoyment of the airports and the services and facilities furnished by the department in connection therewith, including the establishment of a statewide system of airports landing fees, a statewide system of airports support charges, and joint use charges for the use of space shared by users, which fees and charges may vary among different classes of users such as foreign carriers, domestic carriers, inter-island carriers, air taxi operators, helicopters, and such other classes as may be determined by the director, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature.

In setting airports rates and charges, including landing fees, the director may enter into contracts, leases, licenses, and other agreements with aeronautical users of the statewide system of airports containing such terms, conditions, and provisions as the director deems advisable.

If the director has not entered into contracts, leases, licenses, and other agreements with any or fewer than all of the aeronautical users of the statewide system of airports prior to the expiration of an existing contract, lease, license, or agreement, the director shall set and impose rates, rentals, fees, and charges pursuant to this subsection without regard to the requirements of chapter 91; provided that a public informational hearing shall be held on the rates, rentals, fees, and charges.

The director shall develop rates, rentals, fees, and charges in accordance with a residual methodology so that the statewide system of airports shall be, and always remain, self-sustaining. The rates, rentals, fees, and charges shall be set at such levels as to produce revenues which, together with aviation fuel taxes, shall be at least sufficient to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds.

The director may develop and formulate methodology in setting the various rates, rentals, fees, and charges imposed and may determine usage of space, estimate landed weights, and apply such portion of nonaeronautical revenue deemed appropriate in determining the rates, rentals, fees, and charges applicable to aeronautical users of the statewide system of airports.

The rates, rentals, fees, and charges determined by the director in the manner set forth in this subsection shall be those charges payable by the aeronautical users for the periods immediately following the date of expiration of the

existing contract, lease, license, or agreement. If fees are established pursuant to this section, the department shall prepare a detailed report on the circumstances and rates and charges that have been established, and shall submit the report to the legislature no later than twenty days prior to the convening of the next regular session.

If a schedule of rates, rentals, fees, and charges developed by the director in accordance with this section is projected by the department to produce revenues which, together with aviation fuel taxes, will be in excess of the amount required to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds, the department shall submit the schedule of rates, rentals, fees, and charges to the legislature prior to the convening of the next regular session of the legislature. Within forty-five days after the convening of the regular session, the legislature may disapprove any schedule of rates, rentals, fees, and charges required to be submitted to it by this section by concurrent resolution. If no action is taken by the legislature within the forty-five-day period the schedule of rates, rentals, fees, and charges shall be deemed approved. If the legislature disapproves the schedule within the forty-five-day period, the director shall develop a new schedule of rates, rentals, fees, and charges in accordance with this section within seventy-five days of the disapproval. Pending the development of a new schedule of rates, rentals, fees, and charges, the schedule submitted to the legislature shall remain in force and effect.

Notwithstanding any other provision of law to the contrary, the department may waive landing fees and other aircraft charges established under this section at any airport owned or controlled by the State whenever:

- (1) The governor declares a state of emergency; and
 - (2) The department determines that the waiver of landing fees and other charges for the aircraft is consistent with assisting in the delivery of humanitarian relief to disaster-stricken areas of the State.
- (f) To enforce the payment of any charges for repairs or improvements to, or storage or care of any personal property made or furnished by the department or its agent in connection with the operation of an airport or air navigation facility owned or operated by the department, the department shall have liens on the property, which shall be enforceable by it as provided by sections 507-18 to 507-22.

(g) The department from time to time may establish developmental rates for buildings and land areas used exclusively for general aviation activities at rates not less than fifty per cent of the fair market rentals of the buildings and land areas and may restrict the extent of buildings and land areas to be used.

~~(h) Notwithstanding any laws to the contrary, the department may establish, levy, assess, and collect rental motor vehicle customer facility charges without regard to chapter 91, which shall be paid to the department periodically as determined by the department and shall be used to pay for, or finance on a long term basis or other term basis where appropriate, the design, planning, construction, and other uses of the rental motor vehicle customer facility charges as set forth by the rental motor vehicle customer facility charge special fund in section 261-5.6.~~

~~The rental motor vehicle customer facility charges shall be levied, assessed, and collected from all rental motor vehicle customers who benefit from the use of any type of rental motor vehicle facility or service provided by the department at a state airport.~~

~~Beginning September 1, 2010, the department shall levy, assess, and collect a rental motor vehicle customer facility charge of \$4.50 per day, or any por-~~

tion of a day that a rental motor vehicle is rented or leased, by a rental motor vehicle concession where customers pick up and return rental vehicles to a facility at a state airport as determined by the director.

All rental motor vehicle customer facility charges shall be collected by lessors as defined in section 437D-3 and who operate a rental motor vehicle concession awarded by the department at a state airport; provided that customers of lessors, as defined in section 437D-3, who do not operate a rental motor vehicle concession at a state airport but whose customers benefit from the use of a rental motor vehicle facility or service at a state airport paid for by rental motor vehicle customer facility charges, shall collect from rental motor vehicle customers, rental motor vehicle customer facility charges in an amount determined by the department in its sole discretion that represents a fair share of the cost and ongoing expenses relating to customer use of the facility or service notwithstanding any law to the contrary and without regard to the requirements of chapter 91. All rental motor vehicle customer facility charges collected by the lessor shall be paid to the department.

Notwithstanding any law to the contrary, the department may negotiate and contract the management, maintenance, and operations of the facility and related services with one or more airport concessions or their designee that share in the use of a rental motor vehicle customer facility at a state airport.]”

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on June 30, 2011; provided that part II of this Act shall take effect on July 1, 2011; provided further that on June 30, 2012, sections 4 and 5 of this Act shall be repealed and sections 251-5 and 261-7, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved June 9, 2011.)

ACT 105

S.B. NO. 754

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to temporarily suspend the general excise and use tax exemptions for certain amounts received by certain persons and, instead, require those persons to pay the applicable tax on those amounts at a specified rate. The suspension and imposition of the tax commences on July 1, 2011, and ends on June 30, 2013.

This Act does not suspend the existing general excise tax exemption for nonprofit organizations with the exception of the value or gross income received by nonprofit organizations from certain conventions, conferences, trade shows, or display spaces.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§237- Temporary suspension of exemption of certain amounts; levy of tax. (a) Notwithstanding any other law to the contrary, the exemption of the following amounts from taxation under this chapter shall be suspended from July 1, 2011, through June 30, 2013:

- (1) Amounts deducted from the gross income received by contractors as described under section 237-13(3)(B);
- (2) Reimbursements received by federal cost-plus contractors for the costs of purchased materials, plant, and equipment as described under section 237-13(3)(C);
- (3) Gross receipts of home service providers acting as service carriers providing mobile telecommunications services to other home service providers as described under section 237-13(6)(D);
- (4) Amounts deducted from the gross income of real property lessees because of receipt from sublessees as described under section 237-16.5;
- (5) The value or gross income received by nonprofit organizations from certain conventions, conferences, trade show exhibits, or display spaces as described under section 237-16.8;
- (6) Amounts received by sugarcane producers as described under section 237-24(14);
- (7) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped interisland as described under section 237-24.3(1);
- (8) Amounts received from the sale of intoxicating liquor, cigarettes and tobacco products, and agricultural, meat, or fish products to persons or common carriers engaged in interstate or foreign commerce as described under section 237-24.3(2);
- (9) Amounts received or accrued from the loading or unloading of cargo as described under section 237-24.3(4)(A);
- (10) Amounts received or accrued from tugboat and towage services as described under section 237-24.3(4)(B);
- (11) Amounts received or accrued from the transportation of pilots or government officials and other maritime-related services as described under section 237-24.3(4)(C);
- (12) Amounts received by labor organizations for real property leases as described under section 237-24.3(10);
- (13) Amounts received as rent for aircraft or aircraft engines used for interstate air transportation as described under section 237-24.3(12);
- (14) Amounts received by exchanges and exchange members as described under section 237-24.5;
- (15) Amounts received as high technology research and development grants under section 206M-15 as described under section 237-24.7(10);
- (16) Amounts received from the servicing and maintenance of aircraft or construction of aircraft service and maintenance facilities as described under section 237-24.9;
- (17) Gross proceeds from the sale of the following:
 - (A) Intoxicating liquor to the United States (including any agency or instrumentality of the United States that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 244D, but not including national

banks) or any organization to which the sale is permitted by the proviso of "Class 3" of section 281-31 that is located on any Army, Navy, or Air Force reservation as described under section 237-25(a)(1);

- (B) Tobacco products and cigarettes to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of tax under chapter 238 or 245, but not including national banks) as described under section 237-25(a)(2); and
 - (C) "Other tangible personal property" to the United States (including any agency, instrumentality, or federal credit union thereof, but not including national banks) and any state-chartered credit union as described under section 237-25(a)(3);
- (18) Amounts received by petroleum product refiners from other refiners for further refining of petroleum products as described under section 237-27;
 - (19) Gross proceeds received from the construction, reconstruction, erection, operation, use, maintenance, or furnishing of air pollution control facilities, as described under section 237-27.5, that do not have valid certificates of exemption on July 1, 2011;
 - (20) Gross proceeds received from shipbuilding and ship repairs as described under section 237-28.1;
 - (21) Amounts received by telecommunications common carriers from call center operators for interstate or foreign telecommunications services as described under section 237-29.8;
 - (22) Gross proceeds received by qualified businesses in enterprise zones, as described under section 209E-11, that do not have valid certificates of qualification from the department of business, economic development, and tourism on July 1, 2011; and
 - (23) Gross proceeds received by contractors licensed under chapter 444 for construction within enterprise zones performed for qualified businesses within the enterprise zones or businesses approved by the department of business, economic development, and tourism to enroll into the enterprise zone program, as described under section 209E-11.

(b) Except as otherwise provided under subsection (f), (g), or (h), there is levied, assessed, and collected annually against a taxpayer receiving or deriving previously exempt gross income or gross proceeds of sale from July 1, 2011, to June 30, 2013, a tax at the rate of four per cent on that previously exempt gross income or gross proceeds of sale.

(c) As used in this section, "previously exempt gross income or gross proceeds of sale" means the amount of the gross income or gross proceeds of sale, the exemption for which is suspended under subsection (a). The term also includes the value received by a nonprofit organization from conventions, conferences, trade show exhibits, and display spaces, the exemption for which is suspended under subsection (a)(5).

(d) The taxpayer, against whom the tax is levied and assessed under this section, shall be responsible for payment of the tax to the director of taxation.

(e) Notwithstanding section 237-8.6, no county surcharge shall be levied, assessed, or collected on any previously exempt gross income or gross proceeds of sale that is subject to taxation under subsection (b).

(f) This section shall not apply to gross income or gross proceeds from binding written contracts entered into prior to July 1, 2011, that do not permit the passing on of increased rates of taxes.

(g) This section shall not apply to gross income or gross proceeds from stevedoring services and related services, as defined in section 382-1, furnished to a company by its wholly owned subsidiary.

(h) The tax imposed under subsection (b) shall not apply to any gross income or gross proceeds of sale that cannot legally be so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which the State is without power to impose the tax.

To the extent that any exemption, exclusion, or apportionment is necessary to comply with the preceding sentence, the director of taxation shall:

- (1) Exempt or exclude the gross income or gross proceeds of sale from the tax under subsection (b); or
- (2) Apportion the gross income or gross proceeds of sale derived within the State by persons engaged in business both within and without the State to determine the gross income or gross proceeds of sale that is subject to taxation under this chapter for the purposes of section 237-21.

(i) This chapter shall apply to the payment, collection, enforcement, and appeal of the tax levied under this section.

The director of taxation may establish additional requirements, procedures, and forms pursuant to rules adopted under chapter 91, to effectuate this section.

§237- Information reporting. Beginning July 1, 2011, the director of taxation shall require information reporting on all exclusions or exemptions of all amounts, persons, or transactions from this chapter, except for the following:

- (1) Amounts received that are exempt under section 237-24(1) through (7); and
- (2) Any other amounts, persons, or transactions as determined by the director to be in the best interest of tax administration and made by official pronouncement.”

SECTION 3. Chapter 238, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§238- Temporary suspension of exemption of certain amounts; levy of tax. (a) Notwithstanding any other law to the contrary, the exemption of the following from taxation under this chapter shall be suspended from July 1, 2011, through June 30, 2013:

- (1) The leasing or renting of aircraft or keeping of aircraft solely for leasing or renting for commercial transportation of passengers and goods or the acquisition or importation of aircraft or aircraft engines by a lessee or renter engaged in interstate air transportation, as described under paragraph (6) of the definition of “use” in section 238-1;
- (2) The use of oceangoing vehicles for passenger or passenger and goods transportation from one point to another within the State as a public utility, as described under paragraph (7) of the definition of “use” in section 238-1;
- (3) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237 that are used for aircraft service and maintenance or the construction of an aircraft service and maintenance facility, as described under paragraph (8) of the definition of “use” in section 238-1;

- (4) The use or sale of intoxicating liquor and cigarette and tobacco products imported into the State and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out of State by the person, crew, or passengers on the shipper's vessels or airplanes, as described under section 238-3(g);
- (5) The use of any vessel constructed under section 189-25 prior to July 1, 1969, as described under section 238-3(h); and
- (6) The use of any air pollution control facility subject to section 237-27.5 as described under section 238-3(k).

(b) Except as otherwise provided under subsection (f) or (g), there is levied, assessed, and collected annually against a taxpayer who imports or purchases previously exempt property, services, or contracting for use in this State that becomes subject to the State's taxing jurisdiction from July 1, 2011, to June 30, 2013, a tax at the rate of four per cent on the value of that previously exempt property, services, or contracting.

(c) As used in this section, "previously exempt property, services, or contracting" means property, services, or contracting, the exemption for which is suspended under subsection (a).

(d) A taxpayer, against whom the tax is levied and assessed under this section, shall be responsible for payment of the tax to the director of taxation.

(e) Notwithstanding section 238-2.6, no county surcharge shall be levied, assessed, or collected on the value of any previously exempt property, services, or contracting that is subject to taxation under subsection (b).

(f) This section shall not apply to any property, services, or contracting imported or purchased under binding written contracts entered into prior to July 1, 2011, that do not permit the passing on of increased rates of taxes.

(g) The tax imposed under subsection (b) shall not apply to any property, services, or contracting or to any use of the property, services, or contracting that cannot legally be so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which the State is without power to impose the tax.

To the extent that any exemption, exclusion, or apportionment is necessary to comply with the preceding sentence, the director of taxation shall:

- (1) Exempt or exclude the property, services, or contracting or the use of the property, services, or contracting, from the tax under subsection (b); or
- (2) Apportion the gross value of services or contracting sold to customers within the State by persons engaged in business both within and without the State to determine the value of that portion of the services or contracting that is subject to taxation under chapter 237 for the purposes of section 237-21.

(h) This chapter shall apply to the payment, collection, enforcement, and appeal of the tax levied under this section.

The director of taxation may establish additional requirements, procedures, and forms pursuant to rules adopted under chapter 91, to effectuate this section.

§238- Information reporting. Beginning July 1, 2011, the director of taxation shall require information reporting on all exclusions or exemptions of all amounts, persons, or transactions from this chapter, except for any amounts, persons, or transactions as determined by the director to be in the best interest of tax administration and made by official pronouncement."

SECTION 4. The department of taxation shall have the authority to postpone the payment of the tax imposed under this Act until the deadline to file the general excise or use tax annual return and reconciliation form, as applicable, without regard to any extension.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2011, and shall be repealed on June 30, 2013.

(Approved June 9, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 106

H.B. NO. 1532

A Bill for an Act Relating to Real Property Tax Appeals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 232-16, Hawaii Revised Statutes, is amended to read as follows:

“§232-16 Appeal to tax appeal court. (a) A taxpayer or county~~[-in all cases,]~~ may appeal directly to the tax appeal court without appealing to a state board of review~~[-]~~ or any equivalent administrative body established by county ordinance~~[-]~~; provided that a taxpayer appealing a real property tax assessment shall first obtain a decision from an administrative body established by county ordinance, prior to appealing to the tax appeal court, if county ordinance requires a taxpayer to do so. An appeal to the tax appeal court is properly commenced by filing, on or before the date fixed by law for the taking of the appeal, a written notice of appeal in the office of the tax appeal court and by service of the notice of appeal on the director of taxation and, in the case of an appeal from a decision involving the county as a party, the real property assessment division of the county involved. An appealing taxpayer shall also pay the costs in the amount fixed by section 232-22.

(b) The notice of appeal to the tax appeal court shall be sufficient if it meets the requirements prescribed for a notice of appeal to the board of review and may be amended at any time; provided that it sets forth ~~the following additional information, to-wit:~~

A) a brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.

(c) The notice of appeal shall be accompanied by a copy of the taxpayer's return, if any has been filed; provided that an individual taxpayer is authorized to redact all but the last four digits of the taxpayer's social security number from any accompanying tax return.

If a county ordinance requires a taxpayer appealing a real property tax assessment to first obtain a decision from an administrative body established by county ordinance prior to appealing to the tax appeal court, the notice of appeal shall be accompanied by a copy of the decision from the administrative body.

(d) An appeal to the tax appeal court shall be deemed to have been taken in time if the notice thereof and costs and the copy of the notice shall have

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been deposited in the mail, postage prepaid, properly addressed to the tax appeal court, the director of taxation, or the real property assessment division of the county involved, and to the taxpayer or taxpayers in the case of an appeal taken by a county, respectively, on or before the date fixed by law for the taking of the appeal.

(e) An appeal to the tax appeal court shall bring up for review all questions of fact and all questions of law, including constitutional questions, necessary to the determination of the objections raised by the taxpayer or county in the notice of appeal.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 14, 2011.)

ACT 107

S.B. NO. 101

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding four¹ new sections to be appropriately designated and to read as follows:

“§321- **Producers of hand-pounded poi; exemption.** A producer of hand-pounded poi shall not be required to process poi in a certified food-processing establishment or be required to obtain a permit from the department of health, if the producer:

- (1) Sells hand-pounded poi directly to consumers;
- (2) Prepares hand-pounded poi adjacent to permanent or temporary hand-washing facilities; and
- (3) Complies with rules adopted by the department to protect the health and safety of the public.

The department shall adopt rules pursuant to chapter 91 to effectuate this section no later than December 31, 2011.”

SECTION 2. New statutory material is underscored.²

SECTION 3. This Act shall take effect upon approval.

(Approved June 14, 2011.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 108

S.B. NO. 1278

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to protect consumers, particularly seniors, from abusive financial services practices by adopting model regulations of the National Association of Insurance Commissioners in compliance with the senior investor protections contained in Section 989A of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. In 2007, the legislature passed Act 257, Session Laws of Hawaii 2007, which established standards and procedures for insurers and insurance producers to make recommendations to consumers regarding the purchase or exchange of annuities. Part I of this Act adopts the updated version of the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation dated March 28, 2010. Part II of this Act adopts the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities to protect seniors against producers who misrepresent their level of expertise and credentials in the marketing and sales of life insurance and annuity products.

PART I

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part VII of article 10D to be appropriately designated and to read as follows:

“§431:10D-A Insurance producer training. (a) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer’s standards for product training. An insurance producer may rely on insurer-provided product-specific training and materials to comply with this subsection.

(b) Any insurance producer who is authorized to sell life or accident and health or sickness insurance and who engages in the sale of annuity products shall complete by January 31, 2012, a one-time training course on annuity products that is approved by the commissioner and is conducted by an approved continuing education course provider. An insurance producer who obtains a life insurance line of authority after January 31, 2012, shall not engage in the sale of annuities until the insurance provider has completed training that meets the following requirements:

- (1) The minimum length of the training shall be sufficient to qualify for at least four continuing education credits;
- (2) The training shall include information on the following topics:
 - (A) The types and various classifications of annuities available on the market;
 - (B) Identification of the parties to an annuity;
 - (C) How fixed, variable, and indexed annuity contract provisions affect consumers;
 - (D) The application of income taxation to qualified and non-qualified annuities;
 - (E) The primary uses of annuities; and

- (F) Appropriate sales practices, replacement, and disclosure requirements; and
- (3) The training shall not include any marketing information for products of any particular insurer or training on sales techniques.
- (c) An insurer shall verify that an insurance producer has completed the annuity training course required by this section before allowing the producer to sell an annuity product for the insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion from the training course provider, or by obtaining reports from the commissioner, from training course providers, or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance continuing education providers.”

SECTION 3. Section 431:10D-621, Hawaii Revised Statutes, is amended to read as follows:

“~~¶¶~~**§431:10D-621** **Scope.** (a) This part applies to any recommendation to purchase ~~[or]~~, exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase ~~[or]~~, exchange, or replacement recommended.

(b) This part does not apply to ~~[recommendations]~~ transactions involving:

- (1) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this part; or
- (2) Contracts used to fund:
 - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act;
 - (B) A plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code of 1986, as amended, if established or maintained by an employer;
 - (C) A ~~[government]~~ governmental plan or church plan defined in section 414 of the Internal Revenue Code of 1986, as amended, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization ~~[under]~~ subject to section 457 of the Internal Revenue Code of 1986, as amended;
 - (D) A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - (E) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (F) Formal prepaid funeral contracts.

~~[(c)]~~ Nothing in this ~~[part]~~ shall be construed to affect in any manner any provision of chapter 485A.”

SECTION 4. Section 431:10D-622, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Replacement” means a transaction for the purchase of a new policy or contract that the proposing producer, or the proposing insurer if there is no

producer, knows or has reason to know will cause an existing policy or contract to be:

- (1) Terminated, lapsed, forfeited, or surrendered, partially surrendered, or assigned to the replacing insurer;
- (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) Amended to effect a reduction in either benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) Reissued with any reduction in cash value; or
- (5) Used in a finance purchase.

“Suitability information” means information about the consumer that is reasonably related to the determination of the appropriateness of a recommendation, including the following:

- (1) Age;
- (2) Annual income;
- (3) Financial situation and needs, including the financial resources used for funding the annuity at issue;
- (4) Financial experience;
- (5) Financial objectives;
- (6) Intended use of the annuity;
- (7) Financial time horizon;
- (8) Existing assets, including investment and life insurance holdings;
- (9) Liquidity needs;
- (10) Liquid net worth;
- (11) Risk tolerance; and
- (12) Tax status.”

2. By amending the definitions of “annuity” and “recommendation” to read as follows:

““Annuity” means ~~[a fixed or variable]~~ an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.

“Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase ~~[or]~~, exchange, or replacement of an annuity in accordance with that advice.”

SECTION 5. Section 431:10D-623, Hawaii Revised Statutes, is amended to read as follows:

~~“[H§431:10D-623]~~ **Duties of insurers and insurance producers.** (a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer ~~[on the basis of]~~ based on the facts, including the consumer’s suitability information, disclosed by the consumer about the consumer’s investments, other insurance products, financial situation, and needs~~[-]~~ and that:

- (1) The consumer has been reasonably informed of the various features of the annuity, including the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of rid-

ers; limitations on interest returns; insurance and investment components; and market risk;

- (2) The consumer would benefit from certain features of the annuity, including tax-deferred growth, annuitization, or death or living benefit;
- (3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer; and
- (4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable for the particular consumer taking into consideration whether:
 - (A) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;
 - (B) The consumer would benefit from product enhancements and improvements; and
 - (C) The consumer has had another annuity exchange or replacement, particularly an exchange or replacement within the preceding thirty-six months.

(b) Prior to the execution of a purchase ~~[or]~~, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information ~~[concerning:~~

- (1) The consumer's financial status;
- (2) The consumer's tax status;
- (3) The consumer's investment objectives; and
- (4) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer].

(c) Except as permitted under subsection (d), an insurer shall not issue an annuity that has been recommended to a consumer unless the insurer has a reasonable basis to believe the annuity is suitable for the particular consumer based on the consumer's suitability information.

~~[(e)]~~ (d) (1) Except as provided under paragraph (2), neither an insurance producer~~;~~ nor an insurer ~~[where no producer is involved,]~~ shall have any obligation to a consumer related to any ~~[recommendation]~~ annuity transaction if ~~[a consumer]~~:

- (A) No recommendation is made;
- (B) A recommendation was made based on materially inaccurate information provided by the consumer;
- ~~[(A) Refuses]~~ (C) A consumer refuses to provide relevant suitability information [requested by the insurer or insurance producer]; and the annuity transaction is not recommended; or
- ~~[(B) Decides]~~ (D) A consumer decides to enter into an [insurance] annuity transaction that is not based on a recommendation of the insurer or the insurance producer~~;~~ or
- ~~[(C) Fails to provide complete or accurate information.]; and~~
- (2) An ~~[insurer or insurance producer's recommendation]~~ insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer ~~[or insurer]~~

ance producer] at the time [of the recommendation,] the annuity is issued.

(e) An insurance producer or a representative of the insurer, where no insurance producer is involved, shall at the time of sale:

- (1) Make a record of any recommendation subject to this section;
- (2) Obtain a signed statement from the consumer documenting the customer's refusal to provide suitability information, if applicable; and
- (3) Obtain a signed statement from the consumer acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

~~[(d)] (f) An insurer shall [either ensure that a system to supervise recommendations] establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this part [is established and maintained by complying with subsections (f), (g), and (h), or establish and maintain such a system, which shall include but not be limited to:~~

- ~~(1) Maintaining written procedures; and~~
- ~~(2) Conducting a periodic review of the insurer's records that is reasonably designed to assist in detecting and preventing violations of this part.~~

~~(e) A managing general agent and independent agency shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this part, or establish and maintain such a system, which shall include but not be limited to:~~

- ~~(1) Maintaining written procedures; and~~
- ~~(2) Conducting a periodic review of records that is reasonably designed to assist in detecting and preventing violations of this part.~~

~~(f) An insurer may contract with a third party, including a managing general agent or independent agency, to comply with the requirement of subsection (d) to establish and maintain a system of supervision of insurance producers under contract with or employed by the third party.~~

~~(g) An insurer shall make reasonable inquiry to ensure that the third party contracting under subsection (f) is performing the functions required under subsection (d) and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by:~~

- ~~(1) Annually obtaining a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; provided that no person may provide a certification unless:

 - ~~(A) The person is a senior manager with responsibility for the delegated functions; and~~
 - ~~(B) The person has a reasonable basis for making the certification; and~~~~
- ~~(2) Based on reasonable selection criteria, periodically reviewing the performance of selected third parties contracting under subsection (f) to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.~~

~~(h) An insurer that contracts with a third party pursuant to subsection (f) and that complies with the requirements to supervise in subsection (g) shall have fulfilled its responsibilities under subsection (d).] including:~~

- (1) Reasonable procedures to inform the insurer's insurance producers of the requirements of this part, including incorporating the requirements of this part into relevant insurance producer training manuals;
 - (2) Standards for insurance producer product training, including reasonable procedures to require its insurance producers to comply with section 431:10D-A;
 - (3) Product-specific training and training materials that explain all material features of its annuity products to its insurance producers;
 - (4) Procedures for review of each recommendation prior to the issuance of an annuity to ensure that there is a reasonable basis to determine the suitability of a recommendation that may include additional review of selected transactions through electronic, physical, or other means; provided that the insurer may specify criteria for selection of transactions for additional review;
 - (5) Reasonable procedures to detect recommendations that are not suitable, including confirmation of consumer suitability information, systematic consumer surveys, interviews, confirmation letters, and programs of internal monitoring; provided that nothing in this paragraph shall prevent an insurer applying sampling procedures or confirming suitability information after issuance or delivery of the annuity;
 - (6) Annual review and testing of the supervision system which shall be documented in a report to the insurer's senior management, including the senior manager responsible for audit functions, to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any;
 - (7) Procedures for monitoring contracts and, as appropriate, conducting audits to assure that any contracted functions are properly performed; and
 - (8) Annual certification based on reasonable facts from a senior manager who has responsibility for contracted functions that the contracted functions are properly performed.
- (g) An insurer may contract for performance of any functions, including maintenance of procedures, required by subsection (f)(1) to (6); provided that an insurer shall be responsible for taking any appropriate corrective action and may be subject to sanctions and penalties pursuant to section 431:10D-624 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subsection (f).
- ~~[(4)] (h) An insurer[, managing general agent, or independent agency] is not required [by subsections (d) and (e)] to:~~
- ~~(1) Review, or provide for review of, all insurance producer-solicited transactions; or~~
 - ~~(2) Include] to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer[, managing general agent, or independent agency].~~
- ~~[(j) A managing general agent or independent agency who contracts with an insurer under subsection (f) shall promptly, when requested by the insurer under subsection (g), give a certification as described in subsection (g) or give a clear statement that it is unable to satisfy the certification criteria.]~~
- (i) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

- (1) Truthfully responding to an insurer's request for confirmation of suitability information;
- (2) Filing a complaint; or
- (3) Cooperating with the investigation of a complaint.

~~[(k)]~~ (j) [Compliance with the National Association of Securities Dealers Conduct Rules] Sales made in compliance with requirements of the Financial Industry Regulatory Authority or its successor agency pertaining to suitability and supervision of annuity transactions shall satisfy the requirements [under] of this section [for recommending variable annuities.]; provided that an insurer that issues an annuity subject to this part shall:

- (1) Monitor the sales by entities registered as broker-dealers with the Financial Industry Regulatory Authority of annuities issued by the insurer using information collected in the normal course of an insurer's business; and
- (2) Provide the entity subject to paragraph (1) with any information and reports that are reasonably necessary to assist the entity in maintaining the supervision system required by the Financial Industry Regulatory Authority.

This subsection shall apply to sales of variable annuities and fixed annuities where suitability and supervision requirements are similar to those applied to variable annuity sales. Nothing in this subsection shall limit the insurance commissioner's ability to enforce this part."

SECTION 6. Section 431:10D-624, Hawaii Revised Statutes, is amended to read as follows:

~~“[§431:10D-624]—Mitigation of responsibility.]~~ **Compliance mitigation; penalties.** (a) [The] An insurer shall be responsible for compliance with this part. If a violation occurs because of the action or inaction of the insurer or its insurance producer, the commissioner may order:

- (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's[.] or [by] its insurance producer's[.] violation of this part;
- (2) [A]n A business entity, general agency, independent agency, or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this part; and
- (3) [A general agency or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this part.] Appropriate penalties and sanctions.

(b) Any penalty applicable to an insurer, a managing general agent, independent agencies, or a producer under article 13 of chapter 431 [for] may be applicable to a violation [of section 431:10D-623(a), (b), and (c)] of this part; provided that penalties may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered[.] or if the violation was not part of a pattern or practice."

PART II

SECTION 7. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 10D to be appropriately designated and to read as follows:

“PART . USE OF SENIOR-SPECIFIC DESIGNATIONS AND PROFESSIONAL DESIGNATIONS

§431:10D-B Purpose. The purpose of this part is to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation of, sale of, or purchase of, or advice given in connection with a life insurance or annuity product.

§431:10D-C Prohibited uses of senior-specific certifications and professional designations. (a) It is an unfair and deceptive act or practice in the business of insurance within the meaning of article 13 for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has a special certification or training in advising or servicing seniors in connection with the solicitation, sale, or purchase of a life insurance or annuity product or in providing advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product either directly or indirectly through publications or writings or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

(b) The prohibited use of senior-specific certifications or professional designations includes the following:

- (1) Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use the certification or designation;
- (2) Use of a non-existent, false, or self-conferred certification or professional designation;
- (3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the insurance producer using the certification or designation does not have; and
- (4) Use of a certification or professional designation that was obtained from a certifying or designating organization that:
 - (A) Is primarily engaged in the business of instruction in sales or marketing;
 - (B) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
 - (C) Does not have reasonable standards or procedures for monitoring and penalizing its certificants or designees for improper or unethical conduct; or
 - (D) Does not have reasonable continuing education requirements for its certificants or designees to maintain the certificate or designation.

(c) There is a rebuttable presumption that a certifying or designating organization is not disqualified for purposes of subsection (b) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

- (1) The American National Standards Institute;
- (2) The National Commission for Certifying Agencies; or
- (3) Any organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes".

(d) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

- (1) Use of one or more words such as “senior”, “retirement”, “elder”, or like words combined with one or more words such as “certified”, “registered”, “chartered”, “adviser”, “specialist”, “consultant”, “planner”, or like words, in the name of the certification or professional designation; and
- (2) The manner in which those words are combined.

(e) For purposes of this section, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation unless it is used in a manner that would confuse or mislead a reasonable consumer when the job title:

- (1) Indicates seniority or standing within the organization; or
- (2) Specifies an individual’s area of specialization within the organization.”

PART III

SECTION 8. In codifying the new sections added by sections 2 and 7 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2011; provided that sections 2 through 6 of this Act shall take effect on January 1, 2012.

(Approved June 14, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 109

S.B. NO. 1482

A Bill for an Act Relating to the Public Utilities Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 269-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The public utilities commission ~~may~~ shall consider the need ~~for~~ to reduce the State’s reliance on fossil fuels through energy efficiency and increased renewable energy ~~use~~ generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs of utility system capital improvements and operations, the commission shall explicitly consider, quantitatively or qualitatively, the effect of the State’s reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions. The commission may determine that short-term costs or direct costs that are higher than alternatives relying more heavily

on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 14, 2011.)

ACT 110

H.B. NO. 484

A Bill for an Act Relating to Advanced Practice Registered Nurses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 323, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§323- Practice by advanced practice registered nurses. Each hospital in the State licensed under section 321-14.5 shall allow advanced practice registered nurses recognized pursuant to section 457-8.5 and qualified advanced practice registered nurses granted prescriptive authority pursuant to section 457-8.6 to practice at the hospital within the full scope of practice authorized under chapter 457, including practice as a primary care provider.”

SECTION 2. Section 457-8.6, Hawaii Revised Statutes, is amended to read as follows:

“§457-8.6 Prescriptive authority for advanced practice registered nurses.

(a) The board shall grant prescriptive authority to qualified advanced practice registered nurses and shall designate the requirements for advanced nursing practice related to prescriptive authority. The board shall determine the exclusionary formulary for qualified advanced practice registered nurses who are granted prescriptive authority.

(b) The department of commerce and consumer affairs shall establish a joint formulary advisory committee composed of:

- (1) Two persons licensed as advanced practice registered nurses and appointed by the board;
- (2) Two persons licensed in medicine by the Hawaii medical board and appointed by the Hawaii medical board;
- (3) Three persons licensed as pharmacists and appointed by the board of pharmacy;
- (4) One representative of the University of Hawaii John A. Burns school of medicine appointed by the dean of the University of Hawaii John A. Burns school of medicine; and
- (5) One representative from a school of nursing with an advanced practice registered nurse program.

The joint formulary advisory committee shall recommend the applicable formulary for persons recognized under this section. The board shall consider the recommendations of the joint formulary advisory committee in adopting the formulary. [~~The appropriate working relationship with licensed physicians shall be reflected in rules adopted by the board in accordance with chapter 91.~~]

(c) The board shall establish [~~nursing~~] requirements for advanced practice registered nurses' education, experience, and national certification pursuant to rules adopted in accordance with chapter 91.

(d) Advanced practice registered nurses shall be considered qualified if they have met the requirements of section 457-8.5(a), and have met the advanced pharmacology requirements for initial prescriptive authority pursuant to rules adopted by the board. Only qualified advanced practice registered nurses authorized to diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources and, only as appropriate[;] to the practice specialty in which the advanced practice nurse is qualified, may:

- (1) Prescribe and administer over the counter [~~and~~] drugs, legend drugs, and controlled substances pursuant to this chapter and to chapter 329[;] and request, receive, and dispense manufacturers' prepackaged samples of over the counter and non-controlled legend drugs to patients under their care; provided that an advanced practice registered nurse shall not request, receive, or sign for professional controlled substance samples;
- (2) Prescribe, order, and dispense medical devices and equipment; and
- (3) Plan and initiate a therapeutic regimen that includes nutritional, diagnostic, and supportive services including home health care, hospice, and physical and occupational therapy."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 14, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 111

H.B. NO. 491

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the sheriff division of the department of public safety shoulders responsibilities that are integral to preserving the public peace and safety. Specifically, the division:

- (1) Serves and protects the public, government officials, and state personnel and property under its jurisdiction, including at state facilities, lands, harbors and airports, and within the jurisdictional boundaries of the State of Hawaii, by providing law enforcement services that incorporate patrols, surveillance, and educational activities;
- (2) Protects state judges and judicial proceedings, secures judicial facilities, safely handles detained persons, and provides secure transport for persons in custody; and
- (3) Executes arrest warrants for the judiciary and the Hawaii paroling authority.

The legislature also finds that pursuant to Act 162, Session Laws of Hawaii 2009 and House Concurrent Resolution No. 92, H.D. 1 (2009), the auditor conducted a management audit of the sheriff division, which found the division to be bereft of the training and equipment necessary to fulfill its mission. The audit recommended that the division seek accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc., to help ensure that proper law enforcement standards are met. The Commission on Accreditation for Law Enforcement Agencies, Inc., created in 1979, serves as a law enforcement credentialing authority through collaboration with law enforcement executive associations. Both Honolulu and Maui police departments are accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc., and the auditor used the Commission's *Standards for Law Enforcement Agencies*, fifth edition, as a benchmark for its audit.

Like the auditor, the legislature recognizes that law enforcement officers, such as those in the sheriff division, have tremendous responsibilities, making the receipt of proper training, equipment, and organizational support imperative.

The purpose of this Act is to require the department of public safety to seek and obtain accreditation for the sheriff division from the Commission on Accreditation for Law Enforcement Agencies, Inc.

SECTION 2. Chapter 353C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§353C- Department accreditation required. The department shall pursue and obtain accreditation for the sheriff division from the Commission on Accreditation for Law Enforcement Agencies, Inc.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon approval.

(Approved June 14, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 112

H.B. NO. 1071

A Bill for an Act Relating to Mental Health Release on Conditions of a Person Found Unfit to Stand Trial.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend the law to establish a compliance reporting mechanism for persons found unfit to stand trial who are released on conditions to the community.

SECTION 2. Section 704-406, Hawaii Revised Statutes, is amended to read as follows:

“§704-406 Effect of finding of unfitness to proceed. (1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the

court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. If the court is satisfied that the defendant may be released on ~~[condition]~~ conditions without danger to the defendant or to the person or property of others, the court shall order the defendant's release, which shall continue at the discretion of the court on conditions the court determines necessary. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions. When the defendant is committed to the custody of the director of health for detention, care, and treatment, the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant ~~[which]~~ that have been adjudicated by the acceptance of a plea of guilty or ~~[no contest,]~~ nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or ~~[no contest]~~ nolo contendere made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments~~[-with the exception of];~~ provided that expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center~~[-]~~ shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the ~~[likelihood]~~ likely or actual identification of individuals who furnished information in connection with the investigation ~~[of]~~ or who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.

(2) When the defendant is released on conditions after a finding of unfitness to proceed, the department of health shall establish and monitor a fitness restoration program consistent with conditions set by the court order of release, and shall inform the prosecuting attorney of the county that charged the defendant of the program and report the defendant's compliance therewith.

~~[(2)]~~ (3) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and:

- (a) Order the defendant to be discharged;
- (b) Subject to the law governing the involuntary civil commitment of persons affected by physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or
- (c) Subject to the law governing involuntary outpatient treatment, order the defendant to be released on conditions the court determines necessary.

~~[(3)]~~ (4) Within a reasonable time following any other commitment under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report. If, following a report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

- (a) Release the defendant; or

- (b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.

[(4)] (5) Within a reasonable time following any other release on conditions under subsection (1), the court shall appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

- (a) Release the defendant; or
- (b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 14, 2011.)

ACT 113

H.B. NO. 1376

A Bill for an Act Relating to Evidence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 210, Session Laws of Hawaii 2008 (Act 210), established a limited news media privilege against the compelled disclosure of sources and unpublished information to a legislative, executive, or judicial officer or body, or to any other person who may compel testimony. Act 210 is scheduled to be repealed on June 30, 2011.

The purpose of this Act is to extend the news media privilege to June 30, 2013.

SECTION 2. Act 210, Session Laws of Hawaii 2008, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval¹ and shall be repealed on June 30, ~~[2011.]~~ 2013.”

SECTION 3. The judiciary, through its standing committee on rules of evidence, shall report to the legislature no later than twenty days prior to the convening of the regular session of 2012, the following information or recommendations:

- (1) Whether or not to:
 - (A) Retain the current statutory enactment of Act 210, Session Laws of Hawaii 2008 (Act 210), under chapter 621, Hawaii Revised Statutes, relating to evidence and witnesses;
 - (B) Codify Act 210 under chapter 626, Hawaii Revised Statutes, the Hawaii Rules of Evidence; or

- (C) Allow Act 210 to be repealed.
- (2) Other states that have enacted legislation that is similar to Act 210 and a citation to any enacted legislation;
 - (3) The effects of Act 210 on the media and the prosecution of cases; and
 - (4) Any proposed legislation to amend Act 210.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2011.

(Approved June 14, 2011.)

Note

1. Prior to amendment “,” appeared here.

ACT 114

S.B. NO. 1290

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 214, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

“(b) In addition the department may:

- (1) Use moneys in the Hawaiian home operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into ~~[such]~~ an undertaking, agree to ~~[such]~~ conditions, transfer funds therein available for ~~[such]~~ expenditure, and do and perform ~~[such]~~ other acts and things, as may be necessary or required, as a condition to securing matching funds for ~~[such]~~ the department’s projects or works;
- (2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to lessees in accordance with section 215;
- (3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;
- (4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of ~~[such]~~ these loans; provided that upon receipt of notice of default in the payment of ~~[such]~~ the assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: ~~[the]~~
 - (A) The right of succession to the lessee’s interest and assumption of the contract of loan; ~~[the]~~
 - (B) The right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and ~~[any]~~
 - (C) Any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;

- (5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this subsection, shall at no time exceed [~~\$50,000,000;~~] \$100,000,000; the department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made;
- (6) Use available loan fund moneys or other funds specifically available for [~~such~~] guarantee purposes as cash guarantees when required by lending agencies;
- (7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage;
- (8) Pledge receivables of loan accounts outstanding as collateral to secure loans made by government agencies or private lending institutions to the department, the proceeds of which shall be used by the department to make new loans to lessees or to finance the development of available lands for purposes permitted by this Act; provided that any loan agreement entered into under this paragraph by the department shall include a provision that the money borrowed by the department is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the receivables specifically pledged to repay the loan; provided further that in making loans or developing available lands out of money borrowed under this paragraph, the department may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, to assure repayment of the funds borrowed, and the fees, premiums, and charges shall be deposited into the Hawaiian home trust fund; and provided further that no moneys of the Hawaiian home loan fund may be pledged as security under this paragraph; and
- (9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees."

SECTION 2. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement

of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and effectiveness of the remainder of these amendments or the application thereof shall not be affected.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 14, 2011.)

ACT 115

H.B. NO. 319

A Bill for an Act Relating to Owner-Builders.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 444-2.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Proof of the sale or lease, or offering for sale or lease, of the structure ~~[not more than]~~ within one year after completion~~[-, unless the sale or lease was caused by an eligible unforeseen hardship as determined by the board pursuant to subsection (c).]~~ shall be prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this subsection shall not apply to:

- (1) Residential properties sold or leased to employees of the owner or lessee; ~~[øø]~~
- (2) Construction or improvements performed pursuant to an approved building permit where the estimated valuation of work to be performed, as reflected in the building permit, is less than \$10,000~~[-];~~

or

- (3) Any sale or lease caused by an eligible unforeseen hardship as determined by the board pursuant to subsection (c).

(c) The board shall determine the eligibility of an unforeseen hardship claimed by an owner under subsection (b); provided that an alleged unforeseen hardship shall not be deemed eligible if the board determines that the construction or improvement of the structure was undertaken for the purpose of sale or lease. An exemption for an unforeseen hardship shall not be denied solely because of lack of completion, as the term is defined in subsection (e). An owner seeking a determination of eligibility of an unforeseen hardship shall:

- (1) Be in compliance with the requirements set forth in the disclosure statement required to be provided under section 444-9.1; and
- (2) ~~[Apply in writing]~~ Submit a written application to the board at any time prior to selling, leasing, or offering to sell or lease the property[-] describing the nature of the applicant’s unforeseen hardship. The application shall include supporting documentation detailing the hardship, such as:
 - (A) Evidence of receipt of unemployment compensation;
 - (B) Tax returns;
 - (C) Medical records;
 - (D) Bank statements;
 - (E) Divorce decrees ordering sale of property;
 - (F) Mortgage default letters; or

(G) Bankruptcy filings.

The board shall communicate its determination to the owner in writing within ninety days of receiving a completed application under this subsection.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect July 1, 2011.

(Approved June 14, 2011.)

ACT 116

H.B. NO. 915

A Bill for an Act Relating to Conveyance Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to enable the counties to promptly track ownership, encumbrances, restrictions, uses, and sales prices of real property for the purpose of determining real property tax assessments. This Act requires the director of taxation to provide the administrator of each county's real property assessment division with an image of all certificates of conveyances filed with the bureau of conveyances.

SECTION 2. Section 247-6, Hawaii Revised Statutes, is amended to read as follows:

“**§247-6 Certificate of conveyance required.** (a) Any party, with the exception of governmental bodies, agencies, or officers, to a document or instrument subject to this chapter, or the party's authorized representative, shall file, in the manner and place which the director of taxation shall prescribe, a certificate of conveyance setting forth the actual and full consideration of the property transferred, including any lien or encumbrance on the property, and ~~such~~ any other facts as the director may by rules prescribe. The certificate of conveyance shall be verified by a written declaration thereon that the statements made therein are subject to the penalties in section 231-36. The certificate shall be appended to the document or instrument made subject to this chapter and shall be filed with the director simultaneously with the aforementioned document or instrument for the imprinting of the required seal or seals.

(b) No certificate is required to be filed for any document or instrument made exempt by section 247-3, except that in the following situations, a certificate shall be filed in the manner and place ~~which~~ that the director shall prescribe, within ninety days after the transaction or prior to the recordation or filing of the document or instrument with the registrar of conveyances or the assistant registrar of the land court or after ~~such~~ the ninety-day period, recordation, or filing as the director shall prescribe:

- (1) ~~In the case of~~ For any document or instrument described under section 247-3(3), any party to the document or instrument shall file a certificate declaring that the document or instrument merely confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.
- (2) ~~In the case of~~ For any document or instrument described under section 247-3(4), any party to the document or instrument shall file

a certificate declaring the amount of the nominal consideration paid and marital or parental relationship of the parties.

- (3) ~~[In the case of]~~ For any document or instrument described under section 247-3(5), any party to the document or instrument shall file a certificate declaring the reasons why the consideration is \$100 or less.
- (4) ~~[In the case of]~~ For any document or instrument described in section 247-3(6), any party to the document or instrument shall file a certificate declaring that the document or instrument is made pursuant to an agreement of sale, and where applicable, an assignment or assignments of agreements of sale.
- (5) ~~[In the case of]~~ For any document or instrument described under section 247-3(8), any person made a party to the document or instrument as grantee, assignee, or transferee shall file a certificate declaring the full and actual consideration of the property transferred.
- (6) ~~[In the case of]~~ For any document or instrument described under section 247-3(11), any party to the document or instrument shall file a certificate declaring each owner's:
 - (A) Undivided interest in the real property and the value of that interest before partition; and
 - (B) Proportionate interest and the value of that interest after partition.
- (7) ~~[In the case of]~~ For any document or instrument described under section 247-3(12), any party to the document or instrument shall file a certificate declaring that the document or instrument is made pursuant to an order of the court and containing the court case number.
- (8) ~~[In the case of]~~ For any document or instrument described under section 247-3(13), any party to the document or instrument shall file a certificate declaring that the document or instrument conveys real property from a testamentary trust to a trust beneficiary.
- (9) ~~[In the case of]~~ For any document or instrument described under section 247-3(14), any party to the document or instrument shall file a certificate declaring that the document or instrument conveys real property from the grantor to a grantor's revocable living trust or from a grantor's revocable living trust to the grantor.
- (c) The form of the certificate and the procedure to be followed for the submission of the certificate shall be prescribed by the director.

(d) Notwithstanding the foregoing, where the director deems it impracticable to require the filing of a certificate or certificates or to obtain the signatures of any or all parties to a certificate or certificates required under this section, the director may, in the director's discretion, waive the requirement of filing the certificate or certificates or of securing the signature of any or all parties to the certificate or certificates.

(e) No document or instrument, on account of which a certificate is required to be filed with the office of the director under this section, shall be accepted for recordation or filing with the registrar of conveyances or the assistant registrar of the land court, unless the certificate has been duly filed.

(f) Within twenty-one business days after the end of each week, or as soon thereafter as possible, the director of taxation shall provide to the administrator of each county's real property assessment division, without charge, an image of all certificates of conveyance that were filed. For each certificate of conveyance, the image shall include the following:

- (1) Document number;
- (2) Date of the filing;
- (3) Name of grantor and grantee;
- (4) Tax map key number;
- (5) Location of the real property by island; and
- (6) Address for real property assessment notice and tax bill.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.
(Approved June 14, 2011.)

ACT 117

H.B. NO. 1009

A Bill for an Act Relating to Fingerprint Retention by Hawaii Criminal Justice Data Center.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow the State to indefinitely retain fingerprints of employment and licensing applicants for whom criminal history record checks are authorized statutorily so that the State can implement a statewide “Rap Back” program.

In 2013, two new Federal Bureau of Investigation programs will go into effect:

- (1) The “Next Generation IAFIS”, which will include the retention of applicant prints collected by fifty states; and
- (2) The “Rap Back” program, which will allow employers to request notification if applicants are arrested in the future.

The State’s ability to take advantage of the information and capabilities that other states and the Federal Bureau of Investigation are using will help Hawaii develop its own program and be proactive in decision-making for our vulnerable populations, including children, the elderly, and the disabled. For example, if the department of education hires an applicant with no criminal record, the Hawaii criminal justice data center retains the applicant’s fingerprints. If the applicant is later arrested and the prints taken during the arrest booking match the previously retained applicant prints, the department of education would be notified.

The public will be better protected as employers and licensing agencies will get up-to-date criminal history information. In addition, employees and licensees may not need to be fingerprinted again as part of a re-application or renewal process because up-to-date information will be forwarded automatically to their employers or licensing agencies as part of the “Rap Back” program.

SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is amended to read as follows:

“§846-2.7 Criminal history record checks. (a) The agencies and other entities named in subsection (b) may conduct state and national criminal history record checks on the personnel identified in subsection (b), for the purpose of determining suitability or fitness for a permit, license, or employment; provided that the Hawaii criminal justice data center may charge a reasonable fee for the criminal history record checks performed. The agencies and other entities

named in subsection (b) shall notify applicants and employees subject to a criminal history record check pursuant to this section that their fingerprints shall be retained by the Hawaii criminal justice data center. The criminal history record check shall include the submission of fingerprints to:

- (1) The Federal Bureau of Investigation for a national criminal history record check; and
- (2) The Hawaii criminal justice data center for a state criminal history record check that shall include nonconviction data.

~~[Criminal]~~ Except as otherwise provided in this section, criminal history record information shall be used exclusively for the stated purpose for which it was obtained.

- (b) Criminal history record checks may be conducted by:
 - (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
 - (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
 - (3) The department of health on all applicants for licensure for, operators for, prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
 - (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
 - (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
 - (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
 - (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
 - (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
 - (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
 - (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
 - (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;

- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act, Title 42 United States Code Section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and

loan association, trust company, and depository financial services loan company as provided by section 412:3-201;

- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (27) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license, as provided by section 489D-9;
- (28) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (29) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (30) The department of commerce and consumer affairs on:
 - (A) An applicant for a mortgage loan originator license; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license, as provided by chapter 454F; and
- (31) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.

(c) The applicant or employee subject to a criminal history record check shall provide to the requesting agency:

- (1) Consent to obtain the applicant's or employee's fingerprints and conduct the criminal history record check;
- (2) Identifying information required by the Federal Bureau of Investigation which shall include but not be limited to name, date of birth, height, weight, eye color, hair color, gender, race, and place of birth; and
- (3) A statement indicating whether the applicant or employee has ever been convicted of a crime.

(d) Fingerprints and information and records relating to the fingerprints acquired by the Hawaii criminal justice data center under this section shall be retained and maintained in an appropriate form and in an appropriate office in the custody and control of the Hawaii criminal justice data center, and shall at all times be kept separate from any similar records relating to the identification of criminals. The information shall be available only to authorized entities and agencies as described in subsection (b) and such other persons or agencies as the attorney general shall authorize, subject to any restriction that the attorney general shall prescribe. The Hawaii criminal justice data center may dispose of any record of fingerprints and information and records relating to the fingerprints without regard to chapter 94, whenever, in the attorney general's discretion, re-

tention of the record is no longer required or practicable. No officer or employee of the Hawaii criminal justice data center shall disclose any records of fingerprints or information and records relating to the fingerprints acquired in the performance of any of the officer's or employee's duties under this section to any person not authorized to receive the same pursuant to this section or pursuant to the orders of the attorney general. No person acquiring from the records of fingerprints or information and records relating to the fingerprints any information concerning any individual shall disclose the information to any person not so authorized to receive the same."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 14, 2011.)

ACT 118

S.B. NO. 1076

A Bill for an Act Relating to Employment Practices.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 378-32, Hawaii Revised Statutes, is amended to read as follows:

“§378-32 Unlawful suspension, barring, discharge, withholding pay, demoting, or discrimination. (a) It shall be unlawful for any employer to suspend, discharge, or discriminate against any of the employer's employees:

- (1) Solely because the employer was summoned as a garnishee in a cause where the employee is the debtor or because the employee has filed a petition in proceedings for a wage earner plan under Chapter XIII of the Bankruptcy Act; [or]
- (2) Solely because the employee has suffered a work injury which arose out of and in the course of the employee's employment with the employer and which is compensable under chapter 386 unless the employee is no longer capable of performing the employee's work as a result of the work injury and the employer has no other available work which the employee is capable of performing. Any employee who is discharged because of the work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the discharge and during the period thereafter until the employee secures new employment. This paragraph shall not apply to any employer in whose employment there are less than three employees at the time of the work injury or who is a party to a collective bargaining agreement which prevents the continued employment or reemployment of the injured employee;
- (3) Because the employee testified or was subpoenaed to testify in a proceeding under this part; or
- (4) Because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with section 329B-5.5; provided that this provision shall not apply to an employee who fails or re-

fuses to report to a laboratory for a substance abuse test pursuant to section 329B-5.5.

(b) It shall be unlawful for an employer or a labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave; provided that:

- (1) After an employee uses three or more consecutive days of sick leave, an employer or labor organization may require the employee to provide written verification from a physician indicating that the employee was ill when the sick leave was used;
- (2) This subsection shall apply only to employers who:
 - (A) Have a collective bargaining agreement with their employees; and
 - (B) Employ one hundred or more employees; and
- (3) Nothing in this subsection shall be construed to supersede any provision of any collective bargaining agreement or employment benefits program or plan that provides greater employee benefits or rights.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 14, 2011.)

ACT 119

S.B. NO. 1067

A Bill for an Act Relating to Probation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii law is silent on the disclosure of information by the judiciary of criminal risk information post-intake to treatment agencies.

The legislature further finds that risk information from the Hawaii probation office is critical to treatment agencies because it is used to design the individualized treatment plan. While the judiciary is allowed to share risk information regarding the offender after admission of the offender to a treatment service program, treatment service providers should have this information prior to the admission of the offender into a treatment program. Without this information, the offender may be admitted to a treatment program that is not the best suited to the offender's treatment needs or the offender may receive a substandard or inappropriate treatment plan.

All information, whether received during admission or after admission, is protected under federal confidentiality laws including the federal Health Insurance Portability and Accountability Act of 1996, and Title 42 Code of Federal Regulations Part 2, relating to confidentiality of alcohol and drug abuse. These federal laws and regulations apply whether or not the offender is admitted into a treatment program.

The purpose of this Act is to allow certain adult probation records, including those relevant to a defendant's risk assessment and past treatment, to be provided to certain case management, assessment, or treatment service providers for use as part of the determination of whether the defendant should be accepted or admitted into a treatment program.

SECTION 2. Section 806-73, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All adult probation records shall be confidential and shall not be deemed to be public records. As used in this section, the term "records" includes[;] but is not limited to[;] all records made by any adult probation officer in the course of performing the probation officer's official duties. The records, or the content of the records, shall be divulged only as follows:

- (1) A copy of any adult probation case record or of a portion of it, or the case record itself, upon request, may be provided to:
 - (A) An adult probation officer, court officer, social worker of a Hawaii state adult probation unit, or a family court officer who is preparing a report for the courts; or
 - (B) A state or federal criminal justice agency, or state or federal court program that:
 - (i) Is providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii; or
 - (ii) Is responsible for the preparation of a report for a court;
- (2) The residence address, work address, home telephone number, or work telephone number of a current or former defendant shall be provided only to:
 - (A) A law enforcement officer as defined in section 710-1000(13) to locate the probationer for the purpose of serving a summons or bench warrant in a civil, criminal, or deportation hearing, or for the purpose of a criminal investigation; or
 - (B) A collection agency or licensed attorney contracted by the judiciary to collect any delinquent court-ordered penalties, fines, restitution, sanctions, and court costs pursuant to section 601-17.5[;];
- (3) A copy of a presentence report or investigative report shall be provided only to:
 - (A) The persons or entities named in section 706-604;
 - (B) The Hawaii paroling authority;
 - (C) Any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order or parole order for that treatment;
 - (D) The intake service centers;
 - (E) In accordance with applicable law, persons or entities doing research; and
 - (F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who:
 - (i) Is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or
 - (ii) Is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii;
- (4) Access to adult probation records by a victim, as defined in section 706-646 to enforce an order filed pursuant to section 706-647, shall

- be limited to the name and contact information of the defendant's adult probation officer;
- (5) Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under section 580-10(d)(1), 586-4(e), 586-11(a), or 709-906 may be notified by the defendant's probation officer when the probation officer has any information relating to the safety and welfare of the victim;
 - (6) Notwithstanding paragraph (3) and upon notice to the defendant, records and information relating to the defendant's risk assessment and need for treatment services; information related to the defendant's past treatment and assessments, with the prior written consent of the defendant for information from a treatment service provider; provided that for any substance abuse records such release shall be subject to Title 42 Code of Federal Regulations Part 2, relating to the confidentiality of alcohol and drug abuse patient records; and information that has therapeutic or rehabilitative benefit, may be provided to:
 - (A) A case management, assessment, or treatment service provider assigned by adult probation to service the defendant; provided that ~~such~~ the information shall be given only upon the screening for admission, acceptance, or admittance of the defendant into a ~~treatment~~ program;
 - (B) Correctional case manager, correctional unit manager, and parole officers involved with the defendant's treatment or supervision; and
 - (C) In accordance with applicable law, persons or entities doing research;
 - (7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test results indicate substance use which may be compromising the defendant's medical care or treatment;
 - (8) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same restrictions on disclosure of the records as Hawaii state adult probation offices; and
 - (9) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of the person's official duties shall be fined no more than \$500."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011, and shall be repealed on July 1, 2016; provided that section 806-73(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved June 14, 2011.)

A Bill for an Act Relating to Employment Security Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-123, Hawaii Revised Statutes, is amended to read as follows:

“§383-123 Withdrawals; administrative use. (a) Withdrawals. Moneys requisitioned from the State’s account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds of contributions pursuant to section 383-76 and section ~~[§383-7(a)(6)]~~, except that moneys credited to this State’s account pursuant to ~~[section]~~ Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection (b). The director of finance shall from time to time, with the approval of the department of labor and industrial relations in accordance with rules prescribed by the comptroller of the State, requisition from the unemployment trust fund such amounts, not exceeding the amount in the State’s account, as it deems necessary for the payment of benefits and refunds of contributions for a reasonable future period. The moneys shall be deposited in the benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody. All benefits and refunds of contributions shall be paid from the fund upon warrants drawn upon the director of finance by the comptroller of the State supported by vouchers approved by the department. Any balance of moneys requisitioned from the unemployment trust fund ~~[which]~~ that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be ~~[utilized]~~ used for the payment of, benefits and refunds during succeeding periods~~;~~ or, in the discretion of the department, shall be redeposited with the Secretary of the Treasury of the United States, to the credit of this State’s account in the unemployment trust fund, as provided in section 383-122.

(b) Administrative use. Moneys credited to the account of this State in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to ~~[section]~~ Section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the administration of this State’s unemployment compensation law and public employment offices pursuant to a specific appropriation of the legislature; provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

- (1) Specifies the purposes for which the moneys are appropriated and the amounts appropriated therefor;
- (2) Limits the period within which the moneys may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and
- (3) Limits the amount that may be obligated to an amount that does not exceed the amount by which the aggregate of the amounts credited to the account of this State pursuant to ~~[section]~~ Section 903 of the Social Security Act, as amended, exceeds the aggregate of the amounts obligated pursuant to this subsection and charged against the amounts credited to the account of this State.

Moneys credited to the account of this State pursuant to ~~[section]~~ Section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this chapter pursuant to this subsection.

The appropriation, obligation, and expenditure or other disposition of moneys appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor. Moneys appropriated for the payment of expenses of administration pursuant to this subsection shall be requisitioned as needed for the payment of obligations incurred under the law appropriating the moneys and, upon requisition, shall be deposited in the employment security administration fund from which the payments shall be made. Moneys so deposited, until expended, shall remain a part of the unemployment compensation fund and, if not expended within one week after withdrawn from the unemployment trust fund, shall be returned at the earliest practical date to the Secretary of the Treasury of the United States for credit to this State's account in the unemployment trust fund.

(c) Notwithstanding subsection (b), moneys credited to the State's account in federal fiscal years ending in 2000, 2001, and 2002 shall be used solely for the administration of the unemployment compensation program and are not subject to the specific appropriation requirements of subsection (b), except that moneys credited in calendar year 2002 with respect to P.L. 107-147 shall not be subject to the conditions of this subsection or the two-year limitation requirement specified in subsection (b).

(d) Notwithstanding subsection (b), moneys credited to the account of this State pursuant to the special transfer made in 2009 under Section 903(g) of the Social Security Act, as amended, shall be used solely for the payment of expenses for the administration of this chapter.

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved June 14, 2011.)

ACT 121

H.B. NO. 1094

A Bill for an Act Relating to Commercial Driver Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-231, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Commercial driver's license downgrade” means:

- (1) Authorization to change a driver's self-certification pursuant to Title 49 Code of Federal Regulations Section 383.71, to interstate, but operating exclusively in transportation or operation excepted from the Federal Motor Carrier Safety Regulations as provided in Title 49 Code of Federal Regulations Sections 390.3(f), 391.2, 391.62, and 398.2(b);
- (2) Authorization to change a driver's self-certification pursuant to Title 49 Code of Federal Regulations Section 383.71, to intrastate only if the driver qualifies under the State's physical qualification requirements for intrastate only;

- (3) Authorization to change a driver's self-certification pursuant to Title 49 Code of Federal Regulations Section 383.71, to intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver qualification requirements; or
- (4) Removing the commercial driver's license privilege from the driver's license.

"Commercial driver's license information system driver record" means the electronic record of an individual commercial driver license driver's status and history stored by the state of record as part of the commercial driver's license information system established under Title 49 United States Code Section 31309."

SECTION 2. Section 286-236, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall be issued a commercial driver's license unless that person meets the qualification standards of Title 49 Code of Federal Regulations, Part 391, Subparts B and E, has passed a knowledge and driving skills test for driving a commercial motor vehicle [which] that complies with minimum federal standards established by federal regulation enumerated in Title 49 Code of Federal Regulations, Part 383, Subparts G and H, is domiciled in this State as defined in Title 49 Code of Federal Regulations, Part 383.5, and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act [(CMVSA)] of 1986 [(Title XII], Public Law 99-570)], Title XII, in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed by the director and administered by the respective county examiner of drivers. As of January 30, 2012, the examiner of drivers shall verify that the medical certification status of a driver who self-certified according to Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii)(A), non-excepted interstate, is certified. If a driver submits a current medical examiner's certificate, the examiner of drivers shall date-stamp the certificate and post all required information to the commercial driver's license information system pursuant to Title 49 Code of Federal Regulations Section 383.73(a)(5) and in accordance with Title 49 Code of Federal Regulations Section 383.73(j). A person who is not physically qualified to drive under Title 49 Code of Federal Regulations Section 391.41(b)(1), (2), or (3) and who is otherwise qualified to drive a motor vehicle may be granted an intrastate waiver by the director. The process for granting intrastate waivers shall be the same as that for interstate waivers in Title 49 Code of Federal Regulations[, Part] Section 391.49, except that the intrastate waiver requests shall be submitted to the director; provided that the director shall adopt rules under chapter 91 to establish a screening process, including approval by a licensed physician, for granting an intrastate waiver to persons who are not physically qualified under Title 49 Code of Federal Regulations Section 391.41(b)(3)."

SECTION 3. Section 286-239, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Commercial drivers' licenses may be issued with any one or more of the following endorsements and restrictions:

- (1) "H" – Authorizes the driver to drive a vehicle transporting hazardous materials;
- (2) "K" – Restricts the driver to vehicles not equipped with air brakes;
- (3) "T" – Authorizes driving double and triple trailers;
- (4) "P" – Authorizes driving vehicles carrying passengers;
- (5) "N" – Authorizes driving tank vehicles;

- (6) “X” – Represents a combination of hazardous materials and tank vehicle endorsements;
- (7) “S” – Authorizes driving school buses; ~~[and]~~
- (8) “V” – ~~[Restricts the driver from operating in interstate commerce as defined in Title 49 Code of Federal Regulations Section 390.5.]~~ Indicates there is information about a medical variance on the commercial driver’s license information system driver record; and
- (9) “W” – Restricts the driver from operating in interstate commerce as defined in Title 49 Code of Federal Regulations Section 390.5.”

SECTION 4. Section 286-240, Hawaii Revised Statutes, is amended to read as follows:

“§286-240 Disqualification ~~[and]~~, cancellation~~[-]~~, and downgrade. (a) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- (1) Driving a motor vehicle under the influence of alcohol, a controlled substance, or any drug ~~[which]~~ that impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver’s blood is 0.04 per cent or more by weight;
- (3) Refusing to submit to a test to determine the driver’s alcohol concentration while driving a motor vehicle as required under sections 286-243 and 291E-11;
- (4) Using a motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the motor vehicle driven by the person;
- (6) Unlawful transportation, possession, or use of a controlled substance while ~~[on-duty time;]~~ on duty;
- (7) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver’s commercial driver’s license ~~[had been]~~ is revoked, suspended, or canceled, or the driver ~~[was]~~ is otherwise disqualified from operating a commercial motor vehicle; or
- (8) Causing a fatality through the operation of a commercial motor vehicle, including ~~[but not limited to]~~ through the commission of the crimes of manslaughter and negligent homicide in any degree.

(b) The examiner of drivers shall disqualify any person for a period of not less than three years for any conviction of a violation of any offense listed in subsection (a) that is committed while a hazardous material required to be placarded under Title 49 Code of Federal Regulations, Part 172, Subpart F, is being transported.

(c) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for life if the person is convicted two or more times for ~~[violations of]~~ any of the offenses listed in subsection (a).

(d) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for life if the person uses a motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than sixty days if the person is convicted of two serious traffic violations, or one hundred twenty days if the person is convicted of three serious traffic violations~~[,];~~ provided that the violations

are committed in a commercial motor vehicle [~~arising~~] and arise from separate incidents occurring within a three-year period. The one hundred twenty-day disqualification period required for a third conviction within three years of a [~~“~~serious traffic violation~~”~~], as defined in section 286-231, shall be in addition to any other previously imposed period of disqualification. [~~These~~] The disqualification periods specified in this subsection shall also apply to offenses committed while operating a noncommercial motor vehicle only if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license.

(f) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle or from resubmitting an application for a period of not less than sixty days~~;~~ if the examiner of drivers finds that a commercial driver's license holder or applicant for a commercial driver's license has falsified information or failed to report or disclose required information either before or after issuance of a commercial driver's license.

(g) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than one hundred eighty days and not more than one year for a first violation, [~~or~~] for at least two years and not more than five years for a second violation, [~~or~~] and at least three years and not more than five years for a third or subsequent violation of a driver or vehicle out-of-service order committed in a commercial motor vehicle transporting non-hazardous materials arising from separate incidents occurring within a ten-year period.

(h) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than one hundred eighty days and not more than two years for a first violation~~;~~ and for at least three years and not more than five years for any subsequent violation~~;~~ of a driver or vehicle out-of-service order committed in a commercial motor vehicle transporting hazardous materials required to be placarded under Title 49 Code of Federal Regulations, Part 172, Subpart F, or designed to transport sixteen or more occupants including the driver~~;~~ provided that each violation arises from separate incidents occurring within a ten-year period.

(i) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than sixty days if the person is convicted of a first violation, not less than one hundred twenty days if the person is convicted of a second violation during any three-year period, [~~or~~] and not less than one year if the person is convicted of a third or subsequent violation during any three-year period [~~for a violation~~] of a federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing:

- (1) For all drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
- (2) For all drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
- (3) For all drivers who are always required to stop, failing to stop before driving onto the crossing;
- (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
- (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or
- (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(j) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle [~~when~~] if the driver's driving is determined to constitute an imminent hazard, as defined in section 286-231~~;~~ and [~~the disqualifica-~~

tion is imposed] in accordance with the provisions of Title 49 Code of Federal Regulations Section 383.52.

(k) Beginning January 30, 2014, if a driver fails to provide the examiner of drivers with the certification required under Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii) or a current medical examiner's certificate if the driver self-certifies according to Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii)(A) that the driver is operating in non-excepted interstate commerce as required by Title 49 Code of Federal Regulations Section 383.71(h), the examiner of drivers shall mark the commercial driver's license information system driver record as "not-certified" and initiate a commercial driver's license downgrade."

SECTION 5. Section 286-241, Hawaii Revised Statutes, is amended to read as follows:

"§286-241 Notification of disqualification, suspension, revocation, [or] cancellation, marking medical certification status as "not-certified", or downgrading of commercial driver's licenses or permits. (a) After disqualifying a person, or suspending, revoking, [or] canceling, or marking a medical certification status as not-certified for a commercial driver's license or permit, [the records of] the examiner of drivers shall [be updated] update all records to reflect that action within ten days. Any disqualification imposed in accordance with section 286-240(j) and transmitted by the Federal Motor Carrier Safety Administration shall become a part of the driving record. After suspending, revoking, or canceling a nonresident commercial driver's license or permit, the examiner of drivers shall notify the licensing authority of the state [which] that issued the commercial driver's license within ten days. The notification shall include information regarding any disqualification and the violation or violations that resulted in the disqualification, revocation, suspension, or cancellation.

(b) Beginning January 30, 2012, the examiner of drivers, within ten calendar days of the expiration of a commercial driver's license driver's medical certification status or the expiration or rescission of a medical variance, shall change the medical certification status of that driver to not-certified.

(c) Beginning January 30, 2012, within ten calendar days of receiving information from the Federal Motor Carrier Safety Administration regarding issuance or renewal of a medical variance for a driver, the examiner of drivers shall update the commercial driver's license information system driver record to include the medical variance information provided by the Federal Motor Carrier Safety Administration.

(d) Beginning January 30, 2012, if a driver's medical certification or medical variance expires or if the Federal Motor Carrier Safety Administration notifies the examiner of drivers that a driver's medical variance was removed or rescinded, the examiner of drivers shall:

- (1) Notify the commercial driver's license holder of the holder's not-certified medical certification status and that the commercial driver's license privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance; and**
- (2) Initiate procedures for downgrading the license; provided that the commercial driver's license downgrade shall be completed and recorded within sixty days of the driver's medical certification status becoming not-certified to operate a commercial motor vehicle.**

(e) Beginning January 30, 2014, if a driver fails to provide the examiner of drivers with the certification required by Title 49 Code of Federal Regulations

Section 383.71(a)(1)(ii) or a current medical examiner's certificate if the driver self-certifies according to Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii)(A) that the driver is operating in non-excepted interstate commerce as required by Title 49 Code of Federal Regulations Section 383.71(h) the examiner of drivers shall mark the commercial driver's license information system driver record as not-certified and initiate a commercial driver's license downgrade."

SECTION 6. Section 286-241.4, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"§286-241.4 Authority of examiner of drivers to suspend, revoke, [or] cancel, mark the medical certification status as "not-certified", or downgrade commercial driver's license or permit. (a) The examiner of drivers may suspend, revoke, [or] cancel, mark the medical certification status as not-certified, or downgrade any commercial driver's license or permit without a hearing when the examiner of drivers has probable cause to believe that the licensee is disqualified under section 286-240."

SECTION 7. Section 286-245, Hawaii Revised Statutes, is amended to read as follows:

"§286-245 Driving record information to be recorded and furnished. (a) Whenever a person is convicted of a moving traffic violation based on a statute, ordinance, or rule, fails to appear for a hearing, trial, or other court or administrative proceeding on the moving traffic violation, or fails to pay a fine or court cost ordered for a moving violation, the state judiciary shall forward to the examiner of drivers the record of the conviction. The record of conviction shall include whether the offender was operating a commercial motor vehicle at the time of the offense, whether the offender was transporting hazardous materials requiring placarding under Title 49 Code of Federal Regulations [Section] Part 172, Subpart F, the citation date, the conviction date, the citation number, the court in which the conviction occurred, and the [offense(s)] offenses for which the person has been convicted [or]. No record of conviction [or] transmitted and maintained in the statewide traffic records system shall be used for purposes other than the licensing of drivers[-], including any record of:

- (1) Driving a motor vehicle under the influence of alcohol, a controlled substance, or any drug that impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver's blood is 0.04 per cent or more by weight;
- (3) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle as required under sections 286-243 and 291E-11;
- (4) Using a motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the motor vehicle driven by the person;
- (6) Unlawful transportation, possession, or use of a controlled substance while on duty;
- (7) Driving a commercial motor vehicle if, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license has been revoked, suspended, or canceled, or the driver has been otherwise disqualified from operating a commercial motor vehicle; or

(8) Causing a fatality through the operation of a commercial motor vehicle, including in the commission of the crimes of manslaughter and negligent homicide in any degree.

(b) Within ten days of an in-state conviction^[5] and within ten days of the receipt of notice of an out-of-state conviction, the examiner of drivers shall record and maintain as part of the driver's record:

(1) All convictions, disqualifications, and other licensing actions for violations ~~[both]~~ in this State and out-of-state, of any law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle, by a holder of a commercial driver's license; and

(2) All convictions, disqualifications, and other licensing actions for violations ~~[both]~~ in this State and out-of-state, of any law relating to motor vehicle traffic control, other than a parking violation, committed while the driver was operating a commercial motor vehicle^[5] and was required to have a commercial driver's license.

(c) No commercial driver's license driver's conviction for any violation^[5] in any type of motor vehicle^[5] of a state or local traffic control law, except a parking violation, shall be expunged or subject to deferred imposition of judgment^[5] nor shall an individual be allowed to enter into a diversion program that would prevent the conviction from appearing on the driver's driving record, whether the driver was convicted for an offense committed in this State or another state.

(d) The state judiciary and the examiner of drivers shall make available to the greatest extent possible information from any driver's record required ~~[by]~~ for enforcement of this section ~~[to the greatest extent possible,]~~ to the users designated in subsection (f)^[5] or their authorized agent, within ten days of:

(1) Receiving the conviction or disqualification information from another state; or

(2) Receiving the conviction information for a violation occurring in this State.

(e) All convictions, disqualifications, and other licensing actions for violations shall be retained on each driver's record for at least three years or longer ~~[as]~~ if required under Title 49 Code of Federal Regulations Section 384.231(d).

(f) Only the following users or their authorized agents may obtain a driver's record:

(1) States may receive all information regarding any driver's record;

(2) The Secretary of Transportation may receive all information regarding any driver's record;

(3) A driver may receive only information related to that driver's record; and

(4) A motor carrier employer or prospective motor carrier employer may receive all information regarding ~~[a]~~ an employee driver's driving record, or the ~~[driver's]~~ driving record of a prospective employee driver; provided that the request is made by the driver.

(g) The traffic violations bureaus of the district courts, upon request, shall furnish users designated in subsection (f)^[5] with a certified driver record listing all convictions, disqualifications, and ~~[all]~~ licensing actions in this State and notification of any action received from other states that are recorded and maintained by the examiner of drivers. The traffic violations bureaus shall collect a fee for ~~[those]~~ requests by users designated in subsection (f)(3) and (4), not to exceed \$9, of which \$5 shall be deposited into the general fund, \$2 shall be deposited into the judiciary computer system special fund, and \$2 shall be deposited into the highway fund.

- (h) Beginning January 30, 2012, the examiner of drivers shall:
 - (1) Post on the commercial driver's license information system and maintain as part of the driver's record the driver's self-certification of type of driving under Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii);
 - (2) Retain for at least three years after the date of issuance the original or a copy of the medical certificate of any driver required to provide documentation of physical qualification;
 - (3) Post within ten calendar days the information from the medical examiner's certificate to the commercial driver's license information system driver record, including:
 - (A) The medical examiner's name;
 - (B) The medical examiner's telephone number;
 - (C) The date of issuance of the medical examiner's certificate;
 - (D) The medical examiner's license number and the state that issued it;
 - (E) The medical examiner's number issued by the national registry of medical examiners as required under Title 49 United States Code Section 31149(d);
 - (F) The driver's medical certification status as certified or not-certified;
 - (G) The expiration date of the medical examiner's certificate;
 - (H) The existence of any medical variance on the medical certificate, such as an exemption or skill performance evaluation;
 - (I) Any restrictions including corrective lenses, hearing aids, or a requirement to have possession of an exemption letter or skill performance evaluation certificate while on duty; and
 - (J) The date the medical examiner's certificate information was posted to the commercial driver's license information system driver record; and
 - (4) Record the commercial driver's license downgrade within sixty days of the driver's medical certification status becoming not-certified to operate a commercial driver's license."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2011.

(Approved June 14, 2011.)

ACT 122

H.B. NO. 1241

A Bill for an Act Relating to Abandoned Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 290-2, Hawaii Revised Statutes, is amended to read as follows:

"§290-2 Notice to owner. (a) Upon taking custody of any abandoned vehicle, a written notice shall immediately be sent by registered or certified mail to the legal and registered owner of the vehicle at the address on record at the vehicle licensing division. The notice shall contain a brief description of the

vehicle, the location of custody, and intended disposition of the vehicle if not repossessed within ten days after the mailing of the notice[-], or in the case where the address of the registered owner on record at the vehicle licensing division is an out-of-state address, within twenty business days after the mailing of the notice. A notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing.

(b) For purposes of this section, "business days" shall exclude Saturdays, Sundays, and state holidays."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 14, 2011.)

ACT 123

S.B. NO. 1040

A Bill for an Act Relating to the Hawaii Occupational Safety and Health Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 396-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

"(b) Any employer who has received an order or citation for a serious violation of any standard or rule adopted pursuant to this chapter shall be assessed a civil penalty of not more than ~~[\$7,000]~~ \$7,700 for each violation.

(c) Any employer who has received an order or citation for a violation of any standard or rule adopted pursuant to this chapter, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to ~~[\$7,000]~~ \$7,700 for each violation."

2. By amending subsections (e) to (i) to read:

"(e) Any employer who violates any of the posting requirements prescribed under this chapter shall be assessed a civil penalty of up to ~~[\$7,000]~~ \$7,700 for each violation.

(f) Any employer who wilfully or repeatedly violates this chapter, or any standard, rule, citation, or order issued under the authority of this chapter, shall be assessed a civil penalty of not less than ~~[\$5,000]~~ \$5,500 nor more than ~~[\$70,000]~~ \$77,000 for each violation.

(g) Any employer convicted of wilful or repeated ~~[violation]~~ violations of any standard, rule, citation, or order issued under the authority of this chapter resulting in the death of an employee shall be punished by a fine of not more than ~~[\$70,000]~~ \$77,000 or by imprisonment for not more than six months, or both, except that if the conviction is for a violation committed after a first conviction, punishment shall be by a fine of not more than ~~[\$70,000]~~ \$77,000 or by imprisonment for not more than one year, or both. Failure to correct a violation for which an order or citation of arrest has been issued shall be evidence of wilful conduct.

(h) Any employer who has received an order for violation under section 396-8(e) may be assessed a civil penalty of not more than ~~[\$1,000]~~ \$1,100 for each violation.

(i) Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the director or the director's designees shall, upon conviction, be punished by a fine of not more than ~~[\$1,000]~~ \$1,100 or by imprisonment for not more than six months, or by both."

3. By amending subsections (m) and (n) to read:

"(m) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than ~~[\$10,000,]~~ \$11,000, or by imprisonment for not more than six months, or by both.

(n) Criminal offenses committed against any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code; provided that:

- (1) Ten years shall be added to the maximum term of imprisonment (unless life imprisonment is imposed) and ~~[\$50,000]~~ \$55,000 shall be added to the maximum fine imposed for conviction of a class A felony;
- (2) Five years shall be added to the maximum term of imprisonment and ~~[\$25,000]~~ \$27,500 shall be added to the maximum fine imposed for conviction of a class B felony;
- (3) Three years shall be added to the maximum term of imprisonment and ~~[\$10,000]~~ \$11,000 shall be added to the maximum fine for conviction of a class C felony;
- (4) One year shall be added to the maximum term of imprisonment and ~~[\$2,000]~~ \$2,200 shall be added to the maximum fine for conviction of a misdemeanor; and
- (5) The maximum term of imprisonment and maximum fines prescribed for misdemeanors under the Hawaii Penal Code shall apply to convictions of a petty misdemeanor."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 14, 2011.)

ACT 124

S.B. NO. 120

A Bill for an Act Relating to State Funds.

Be It Enacted by the Legislature of the State of Hawaii:

PART I
Expired Funds

SECTION 1. The legislature finds that certain funds, established by statutes that have long been repealed, are effectively non-functional. The legislature further finds that since the statutory purposes for which these funds were established have been repealed, these funds have outlived their usefulness to the State. Finally, the legislature finds that the moneys currently languishing in these funds will serve the State more effectively if they are deposited into the general fund and, therefore, become accessible to the State.

The purpose of this part is to terminate certain funds for which the statutory authority has expired and to deposit the residual amounts left in each fund into the general fund.

SECTION 2. On July 1, 2011:

- (1) All moneys in the travel agency recovery fund and the travel agency education fund, as of June 30, 2011, shall be transferred to the general fund of the State of Hawaii; and
- (2) The travel agency recovery fund and the travel agency education fund shall cease to exist.

PART II
University of Hawaii

SECTION 3. Section 304A-116, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The provision of child care services may be supported with proceeds from the child care programs ~~[revolving]~~ special fund established under section ~~[[304A-2252]]~~, public funds, and private grants and gifts to pay for the expenses of operation, including payment of principal and interest on any obligations incurred.”

SECTION 4. Section 304A-2252, Hawaii Revised Statutes, is amended to read as follows:

~~“[[§304A-2252]]~~ **Child care programs ~~[revolving]~~ special fund.** There is established a child care programs ~~[revolving]~~ special fund for the operation of child care programs established under section 304A-116 and the construction and renovation of child care centers established by the University of Hawaii. Fees charged for child care at child care programs, proceeds from donations to the university for child care programs, and proceeds from loans or other instruments of indebtedness for the construction or renovation of child care centers shall be deposited into the ~~[revolving]~~ special fund. Expenditures from the ~~[revolving]~~ special fund shall be made for the operation of child care programs and payment of principal and interest on obligations incurred for the construction or renovation of child care centers.”

SECTION 5. Section 304A-2253, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) There is established a University of Hawaii research and training revolving fund into which shall be deposited one hundred per cent of the total amount of indirect overhead revenues generated by the university from research and training programs. The board of regents is authorized to expend one hundred per cent of the revenues deposited in the fund for:

- (1) Research and training purposes that may result in additional research and training grants and contracts;
- (2) Facilitating research and training at the university; and
- (3) Further deposit into the discoveries and inventions ~~[revolving]~~ special fund ~~[and the University of Hawaii housing assistance revolving fund].”~~

2. By amending subsection (c) to read:

“(c) Notwithstanding sections 304A-107~~[5]~~ and ~~[[304A-2254]]~~, ~~and~~ ~~[304A-2258]]~~ to the contrary, the board of regents or its designee, may establish a

separate account within the research and training revolving fund for the purpose of providing advance funding to meet reimbursable costs incurred in connection with federally financed research and training projects. Any reimbursement received as a result of providing advance funding shall be deposited into the research and training revolving fund to be used for the purpose of meeting reimbursable costs incurred in connection with federally financed projects.”

SECTION 6. Section 304A-2254, Hawaii Revised Statutes, is amended to read as follows:

“**[[§304A-2254]] Discoveries and inventions [revolving] special fund.** There is established a discoveries and inventions [revolving] special fund into which shall be deposited a portion of the total indirect overhead funds generated by the university for research and training purposes in the prior fiscal year, as determined by the board of regents. Appropriations by the legislature subject to the approval of the governor, proceeds from the commercial exploitation of inventions and intellectual property developed at the university, gifts, donations, fees collected, and grants from public agencies and private persons may also be deposited into the special fund for the purposes of supporting innovation and research commercialization and the patenting, copyrighting, licensing, and marketing of discoveries, inventions, and technologies developed at the university. The special fund shall be used to develop technologies that have potential commercial value, support the administration of technology transfer activities, and facilitate economic development through education and research undertaken at the university.”

SECTION 7. Section 304A-2259, Hawaii Revised Statutes, is amended to read as follows:

“**[[§304A-2259]] University of Hawaii alumni [revolving] special fund.** There is established the University of Hawaii alumni [revolving] special fund into which shall be deposited funds and proceeds received by the university from alumni activities and donations from alumni. Funds deposited into this [revolving] special fund may be expended by the university for all costs associated with conducting alumni affairs, activities, and programs for the university system, including but not limited to expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, banners and signs, plaques and awards, airfare and per diem, leis, rental of audiovisual, musical, and stage equipment, and activity supplies and materials, without regard to statutory competitive bidding requirements.”

SECTION 8. Section 304A-2261, Hawaii Revised Statutes, is amended to read as follows:

“**[[§304A-2261]] University of Hawaii at Manoa intercollegiate athletics [revolving] special fund and University of Hawaii at Hilo intercollegiate athletics [revolving] special fund.** Notwithstanding any other law to the contrary, there are established the University of Hawaii at Manoa intercollegiate athletics [revolving] special fund and the University of Hawaii at Hilo intercollegiate athletics [revolving] special fund for the intercollegiate athletic programs of the University of Hawaii at Manoa and the University of Hawaii at Hilo, which shall be used to receive, deposit, disburse, and account for funds from the activities of the intercollegiate athletic programs. The university may establish appropriate charges for activities related to its athletic programs and the use of its athletic

facilities, the proceeds from which shall be deposited into these ~~[revolving]~~ special funds.

The university shall maintain the financial integrity and viability of these ~~[revolving]~~ special funds, including the maintenance of an adequate reserve to cope with the various factors that impact the revenue structure of an intercollegiate athletic program.”

SECTION 9. Section 304A-2262, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§304A-2262]]~~ Animal research farm, Waialeale, Oahu ~~[revolving]~~ special fund. There is established the animal research farm, Waialeale, Oahu ~~[revolving]~~ special fund for the animal research farm, Waialeale, Oahu, operated by the college of tropical agriculture and human resources of the University of Hawaii, into which shall be deposited the receipts from fees realized from the sale of livestock, services, and supplies. Funds deposited into this ~~[revolving]~~ special fund shall be expended for animal research, and services and supplies related thereto.”

SECTION 10. Section 304A-2271, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§304A-2271]]~~ University of Hawaii-Hilo theatre ~~[revolving]~~ special fund. There is established the University of Hawaii-Hilo theatre ~~[revolving]~~ special fund, which shall consist of admissions, advertising sales, corporate sponsorships, marketing, merchandising, donations, fund-raising, fees, charges, and other moneys collected in conjunction with the University of Hawaii-Hilo theatre program. The ~~[revolving]~~ special fund shall be administered by the office of administrative affairs of the University of Hawaii at Hilo. Funds may be expended for all costs associated with the theatre program, including artists’ fees, production costs, personnel costs, honoraria, per diem, hotel and room rentals, food and refreshments, printing and mailing, advertising, airfare, leis, rental or purchase of equipment, and theater supplies and materials.”

SECTION 11. Section 304A-2158, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 304A-2258, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 304A-2264, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 304A-2265, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 304A-2266, Hawaii Revised Statutes, is repealed.

SECTION 16. Section 304A-2269, Hawaii Revised Statutes, is repealed.

SECTION 17. All fund balances remaining unencumbered and unexpended as of June 30, 2011, in the University of Hawaii at Manoa conference center revolving fund shall be transferred to the general fund.

SECTION 18. All fund balances remaining unencumbered and unexpended as of June 30, 2011, in the University of Hawaii housing assistance revolving fund shall be transferred to the credit of the Manoa faculty housing program under the University of Hawaii auxiliary enterprises special fund established under section 304A-2157, Hawaii Revised Statutes.

SECTION 19. The conversion of revolving funds to special funds pursuant to sections 4, 6, 7, 8, 9, and 10 of this Act shall in no way be construed as an authorization to remove, alter, or amend any moneys from any revolving fund other than for the purposes of this Act and for the allowable uses under relevant law.

PART III
Fund Transfers

SECTION 20. The recession of 2008 swept across the nation and many parts of the world with unanticipated force and brought with it enormous challenges for governments at all levels. Its effects on businesses and employment are still being felt today, including a profound impact on Hawaii in terms of tax revenues and the state budget.

The legislature finds that due to the extraordinary fiscal circumstances the State is facing, non-general funds must be reviewed and scrutinized to determine if there is an excess of balances available to help address the critical budget shortfall in fiscal year 2011-2012.

The purpose of this part is to help address the fiscal year 2011-2012 budget shortfall by transferring excess balances from various non-general funds into the State's general fund.

SECTION 21. The legislature determines that there is in the state risk management revolving fund at least \$1,000,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the state risk management revolving fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 22. The legislature determines that there is in the medicaid investigations recovery fund at least \$500,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the state medicaid investigations recovery fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 23. The legislature determines that there is in the compliance resolution fund at least \$4,200,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the compliance resolution fund to the general fund the sum of \$4,200,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 24. The legislature determines that there is in the mental health and substance abuse special fund at least \$2,000,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the mental health and substance abuse special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 25. The legislature determines that there is in the drug demand reduction assessments special fund at least \$700,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the drug demand reduction assessments special fund to the general fund the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 26. The legislature determines that there is in the neurotrauma special fund at least \$250,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the neurotrauma special fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 27. The legislature determines that there is in the environmental management special fund at least \$750,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the environmental management special fund to the general fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 28. The legislature determines that there is in the deposit beverage container deposit special fund at least \$300,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the deposit beverage container deposit special fund to the general fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 29. The legislature determines that there is in the employment and training fund at least \$44,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the employment and training fund to the general fund the sum of \$44,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 30. The legislature determines that there is in the Waialua loan subsidy program balance, contained in the rental assistance revolving fund, at least \$1,174 in excess of the requirements of the program. Until June 30, 2011, the director of finance is authorized to transfer from the Waialua loan subsidy program balance to the general fund the sum of \$1,174 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 31. The legislature determines that there is in the UH faculty housing project series 1995 bond proceed special fund at least \$520,780 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the UH faculty housing project series 1995 bond proceed special fund to the general fund the sum of \$520,780 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 32. The legislature determines that there is in the stadium special fund at least \$500,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 33. The legislature determines that there is in the Kikala-Keokea housing revolving fund at least \$428,924 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the Kikala-Keokea housing revolving fund to the general fund the sum of \$428,924 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 34. The legislature determines that there is in the community use of school facilities special fund at least \$1,000,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to

transfer from the community use of school facilities special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 35. The legislature determines that there is in the federal grants search, development, and application revolving fund at least \$500,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the federal grants search, development, and application revolving fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 36. The legislature determines that there is in the trauma system special fund at least \$1,000,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the trauma system special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 37. The legislature determines that there is in the captive insurance administrative fund at least \$2,500,000 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the captive insurance administrative fund to the general fund the sum of \$2,500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 38. The legislature determines that there is in the health care revolving fund at least \$916,284 in excess of the requirements of the fund. Until June 30, 2011, the director of finance is authorized to transfer from the health care revolving fund to the general fund the sum of \$916,284 or so much thereof as may be necessary for fiscal year 2010-2011.

PART IV Conforming Amendments

SECTION 39. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice's designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;

- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- ~~[(7) By the trustees for any action involving the travel agency recovery fund;~~
- ~~(8)~~ (7) By the office of Hawaiian affairs;
- ~~[(9)]~~ (8) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;
- ~~[(10)]~~ (9) As grand jury counsel;
- ~~[(11)]~~ (10) By the Hawaiian home lands trust individual claims review panel;
- ~~[(12)]~~ (11) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- ~~[(13)]~~ (12) By the auditor;
- ~~[(14)]~~ (13) By the office of ombudsman;
- ~~[(15)]~~ (14) By the insurance division;
- ~~[(16)]~~ (15) By the University of Hawaii;
- ~~[(17)]~~ (16) By the Kahoolawe island reserve commission;
- ~~[(18)]~~ (17) By the division of consumer advocacy;
- ~~[(19)]~~ (18) By the office of elections;
- ~~[(20)]~~ (19) By the campaign spending commission;
- ~~[(21)]~~ (20) By the Hawaii tourism authority, as provided in section 201B-2.5;
- ~~[(22)]~~ (21) By the division of financial institutions for any action involving the mortgage loan recovery fund; or
- ~~[(23)]~~ (22) By a department, in the event the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor ~~[thereupon]~~ waives the provision of this section.”

SECTION 40. Section 167-19, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All or any portion of the acreage assessments collected under this chapter, as determined by the board, exclusive of acreage assessments imposed on lands within an irrigation project financed through the issuance of revenue bonds, shall be deposited into the irrigation system revolving fund. Acreage assessments imposed on lands within an irrigation project financed through the issuance of revenue bonds shall be deposited into the ~~[irrigation water development special fund.]~~ general fund.”

SECTION 41. Section 167-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the irrigation system revolving fund, into which shall be deposited:

- (1) All legislative appropriations to the irrigation system revolving fund; and
- (2) All or any portion of the receipts and revenues collected under this chapter, as determined by the board of agriculture ~~[, exclusive of the receipts and revenues deposited into the irrigation water development special fund].~~”

SECTION 42. Section 321-355, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The fund shall consist of grants and income earned by the special fund. [~~Notwithstanding section 29-24, all~~] All program income consisting of federal reimbursement funds received by the State for early intervention funded by legislative appropriations under this part shall be deposited into the special fund; provided that no state appropriations shall be deposited into the special fund.”

SECTION 43. Section 321-356, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The trust fund shall consist of government grants and private contributions including but not limited to gifts or donations from corporations or other businesses, foundations, individuals, and other interested parties, and income earned by the trust fund. [~~Notwithstanding section 29-24, all~~] All program income consisting of federal reimbursement funds received by the State for early intervention funded by private donations and contributions under this part shall be deposited into the trust fund.”

SECTION 44. Section 346-311, Hawaii Revised Statutes, is amended by amending the definition of “secondary discounted price” to read as follows:

““Secondary discounted price” as it pertains to a drug means the initial discounted price less any further discounts [~~paid out of the Rx plus special fund~~].”

SECTION 45. Section 346-344, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) For persons meeting the eligibility requirements in section 346-343, the state pharmacy assistance program may pay all or some of the co-payments required under the federal medicare part D pharmacy benefit program, [~~subject to the sufficiency of funds in the state pharmacy assistance program special fund,~~] as determined by the department.

(b) The state pharmacy assistance program is the payor of last resort [~~subject to the sufficiency of funds in the state pharmacy assistance program special fund~~], as determined by the department.”

SECTION 46. Section 431:22-103, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§431:22-103]] Establishment of loss mitigation grant program.** The commissioner shall develop and implement a pilot grant program to encourage the installation of wind resistive devices. The commissioner may spend up to \$6,000,000 [~~from the loss mitigation grant fund~~] over three years for the grant program, which amounts shall include the costs of administering, operating, and marketing the grant program.

For the first year of the grant program, the commissioner may make grants only to former policyholders of the Hawaii hurricane relief fund. From the second year onward, the commissioner may also make grants to all single or multi-family residential owners, which may include owners of townhouse units or condominium apartments under section 431:22-104(c)(3).”

SECTION 47. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) Moneys in the hurricane reserve trust fund may be:
(+) ~~Disbursed~~ disbursed upon dissolution of the Hawaii hurricane relief fund; provided that:

- [(A)] (1) The net moneys in the hurricane reserve trust fund shall revert to the state general fund after payments by the fund on behalf of licensed property and casualty insurers or the State that are required to be made pursuant to any federal disaster insurance program enacted to provide insurance or reinsurance for hurricane risks are completed; and
- [(B)] (2) If such moneys are paid on behalf of licensed property and casualty insurers, payment shall be made in proportion to the premiums from policies of hurricane property insurance serviced by the insurers in the twelve months prior to dissolution of the fund; [or
- (2) ~~Deposited to the loss mitigation grant fund established under section 431:22-102;~~]

provided that all interest earned from the principal in the hurricane reserve trust fund shall be transferred and deposited into the general fund each year that the hurricane reserve trust fund remains in existence.”

SECTION 48. Section 431P-16.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§431P-16.5] Transfer of funds; immunity.] Immunity.~~ There shall be no cause of action, claim for damages or relief, charge, or any other liability of any kind whatsoever created against the State, the Hawaii hurricane relief fund, the commissioner, or their respective agents, employees, or board, by, or relating to~~], the transfer of any moneys from the hurricane reserve trust fund to the loss mitigation grant fund or from the loss mitigation grant fund to the hurricane reserve trust fund or involving]~~ the loss mitigation grant program.”

PART V Other Repealed Funds

SECTION 49. Section 29-24, Hawaii Revised Statutes, is repealed.

SECTION 50. Section 167-22.5, Hawaii Revised Statutes, is repealed.

SECTION 51. Section 167-24, Hawaii Revised Statutes, is repealed.

SECTION 52. Section 346-318, Hawaii Revised Statutes, is repealed.

SECTION 53. Section 346-345, Hawaii Revised Statutes, is repealed.

SECTION 54. Section 346C-5, Hawaii Revised Statutes, is repealed.

SECTION 55. Section 431:22-102, Hawaii Revised Statutes, is repealed.

SECTION 56. Part XIII of chapter 346, Hawaii Revised Statutes, is repealed.

SECTION 57. Part XV of chapter 346, Hawaii Revised Statutes, is repealed.

PART VI
Master Settlement Agreement Money

SECTION 58. The legislature supports tobacco prevention and cessation. At the same time, due to economic difficulties, the State must ensure that core services such as medicaid, state hospitals, and other core programs addressing the health care needs of the State are adequately funded to meet the needs of the public.

SECTION 59. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The fund shall be used for the purpose of receiving, allocating, and appropriating the tobacco settlement moneys as follows:

- (1) Fifteen per cent shall be appropriated into the emergency and budget reserve fund under section 328L-3; provided that for fiscal years 2012 and 2013, this percentage shall be deposited into the general fund;
- (2) Twenty-five per cent shall be appropriated to the department for purposes of section 328L-4;
- (3) Six and one-half per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section 328L-5; provided that for fiscal years 2012 and 2013, this percentage shall be deposited into the general fund; and
- (4) Twenty-eight per cent shall be appropriated into the university revenue-undertakings fund created in section 304A-2167.5 to be applied to the payment of the principal of and interest on, and to generate required coverage, if any, for¹ revenue bonds issued by the board of regents of the University of Hawaii to finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu, for the succeeding fiscal year; and the payment of annual operating expenses incurred by the new medical school facility; provided that any moneys in excess of the amounts required under this paragraph shall be transferred in the succeeding fiscal year to the emergency and budget reserve fund under section 328L-3; and
- (5) Twenty-five and one-half per cent shall be deposited to the credit of the state general fund.”

SECTION 60. The director of health, with the assistance of the director of finance, shall conduct a study of the Hawaii tobacco prevention and control trust fund to determine whether:

- (1) The moneys that actually have been disbursed from the Hawaii tobacco prevention and control trust fund were:
 - (A) Used in the manner in which the Hawaii tobacco prevention and control trust fund was intended under section 328L-5, Hawaii Revised Statutes; and
 - (B) Disbursed in sufficient amount to adequately fulfill the purposes intended under section 328L-5, Hawaii Revised Statutes; and
- (2) The current level of moneys deposited to the Hawaii tobacco prevention and control trust fund is sufficient to fulfill the purposes for which the Hawaii tobacco prevention and control trust fund was established under section 328L-5, Hawaii Revised Statutes.

The director of health shall submit a report of findings and recommendations, including any proposed legislation, to the legislature not later than twenty days prior to the convening of the regular session of 2012.

PART VII General Provisions

SECTION 61. (a) By July 1, 2011, the director of finance shall transfer any unencumbered balances remaining, as of June 30, 2011, in the special funds that are repealed in part V of this Act to the credit of the general fund.

(b) The director of finance shall identify any special funds that are repealed in parts II and V of this Act that contain or receive deposits from any federal funding source and is authorized to transfer the portions of those balances consisting of federal funds into corresponding separate special accounts within the general fund to enable the continuation of the purposes funded by the federal funding sources.

SECTION 62. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 63. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 64. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 65. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 66. This Act shall take effect upon its approval.

(Approved June 15, 2011.)

Note

1. Prior to amendment “,” appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 125

S.B. NO. 52

A Bill for an Act Relating to Registration of Sex Offenders.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 846E-1, Hawaii Revised Statutes, is amended by amending the definition of “sexual offense” to read as follows:

““Sexual offense” means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a), 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6, 712-1202(1)(a), 712-1202(1)(b), or ~~712-1203(1)(b)~~, 712-1203(1), but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b), or section 707-732(1)(b) if the perpetrator is under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
 - (A) Criminal sexual conduct toward a minor, including but not limited to an offense set forth in section 707-759;
 - (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
 - (C) Use of a minor in a sexual performance;
 - (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;
 - (E) Electronic enticement of a child chargeable under section 707-756 or 707-757 if the offense was committed with the intent to promote or facilitate the commission of another covered offense as defined in this section; or
 - (F) Solicitation of a minor to practice prostitution;
- ~~(4)~~ (4) A violation of privacy under section 711-1110.9;
- ~~(4)~~ (5) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through [(3)] (4) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through [(3)]; (4); or
- ~~(5)~~ (6) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through [(4)]; (5).”

SECTION 2. Section 846E-10, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Tier 2 offenses. A covered offender who has maintained a clean record for the previous twenty-five years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, or for the portion of that twenty-five years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender’s most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-730(1)(c), 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-1202(1)(b), or 712-1203(1)(b)[1], as section 712-1203(1)(b) read prior to its amendment pursuant to section 9 of Act 147, Session Laws of Hawaii 2008;
- (2) An offense set forth in section 707-720; provided that the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;

- (3) An offense set forth in section 707-756 that includes an intent to promote or facilitate the commission of another felony covered offense as defined in section 846E-1;
 - (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
 - (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
 - (6) Any federal, military, or out-of-state offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).
- (d) Tier 1 offenses. A covered offender who has maintained a clean record for the previous ten years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous ten years, or for the portion of that ten years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender's most serious covered offense is one of the following:
- (1) Any offense set forth in section 707-732(1)(d) or (e), 707-733(1)(a), 707-752, 707-759[;], 711-1110.9, 712-1202(1)(a), or 712-1203(1);
 - (2) An offense set forth in section 707-721 or 707-722; provided that the offense involves unlawful imprisonment of a minor by someone other than a parent;
 - (3) An offense set forth in section 707-757 that includes an intent to promote or facilitate the commission of another covered offense as defined in section 846E-1;
 - (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
 - (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
 - (6) Any federal, military, or out-of-state offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4)."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011; provided that consistent with the definition of "sex offender" as provided in section 846E-1, Hawaii Revised Statutes, this Act shall apply retroactively to any person who is or was:

- (1) Convicted at any time of a violation of privacy in the first degree under section 711-1110.9, Hawaii Revised Statutes; or
- (2) Charged at any time with a violation of privacy in the first degree under section 711-1110.9, Hawaii Revised Statutes, is currently or was previously found unfit to proceed against the charges, and is currently or was previously released into the community or who is currently or was previously acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704, Hawaii Revised Statutes, and is currently or was previously released into the community.

(Approved June 15, 2011.)

A Bill for an Act Relating to the Hawaii Health Systems Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Hawaii health systems corporation is the fourth largest public hospital system in the nation and operates public health care facilities that provide essential safety-net hospital and long-term care services throughout the State. Due to rapid changes in the health care industry and the impending implementation of national health care reform, the legislature acknowledges that the corporation's governing board of directors (board) must have the appropriate flexibility and autonomy needed for community hospitals to compete and remain viable.

The director of health is currently an ex-officio, nonvoting member of the board. The legislature finds that to increase the input of the administration and further the implementation of public health policies, the director of health should be given voting rights. To create an uneven number of board members for voting purposes, an additional member shall be appointed by the governor and serve as an at-large member.

The purpose of this Act is to affirm the State's commitment to provide quality health care for the people of the State by including an at-large member on the board and designating the director of health as a voting member.

SECTION 2. Section 323F-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The corporation shall be governed by a ~~[twelve member]~~ thirteen-member board of directors that shall carry out the duties and responsibilities of the corporation other than those duties and responsibilities relating to the establishment of any captive insurance company pursuant to section 323F-7(c)(20) and the operation thereof.

(b) The members of the corporation board shall be appointed as follows:

- (1) The director of health as an ex-officio, ~~[nonvoting]~~ voting member;
- (2) The five regional chief executive officers as ex-officio, voting members; ~~[and]~~
- (3) Two members who reside in the county of Maui who shall be appointed by the Maui regional system board;
- (4) One member who resides in the eastern section of the county of Hawaii who shall be appointed by the East Hawaii regional system board;
- (5) One member who resides in the western section of the county of Hawaii who shall be appointed by the West Hawaii regional system board;
- (6) One member who resides on the island of Kauai who shall be appointed by the Kauai regional system board; ~~[and]~~
- (7) One member who resides on the island of Oahu who shall be appointed by the Oahu regional system board~~[-];~~ and
- (8) One member who shall be appointed by the governor and serve as an at-large voting member.

The appointed board members who reside in the county of Maui, eastern section of the county of Hawaii, western section of the county of Hawaii, on the island of Kauai, and on the island of Oahu shall each serve for a term of four years; provided that the terms of the initial appointments shall be as follows:

one of the initial members from the county of Maui shall be appointed to serve a term of two years and the other member shall be appointed to serve a term of four years; the initial member from East Hawaii shall be appointed to serve a term of two years; the initial member from West Hawaii shall be appointed to serve a term of four years; the initial member from the island of Kauai shall be appointed to serve a term of two years; and the initial member from the island of Oahu shall be appointed to serve a term of four years. The at-large member appointed by the governor shall serve a term of two years.

Any vacancy shall be filled in the same manner provided for the original appointments. The corporation board shall elect its own chair from among its members. Appointments to the corporation board shall be as representative as possible of the system's stakeholders as outlined in this subsection."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 15, 2011.)

ACT 127

S.B. NO. 172

A Bill for an Act Relating to Fireworks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 132D, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§132D- Labeling of display fireworks. (a) This section shall apply to any display fireworks, articles pyrotechnic, or aerial devices used for a display.

(b) Each shell, mine, comet, and multiple tube device, such as finale or barrage boxes, roman candle batteries, or cakes, shall bear a permanent label listing the licensee's name, address, and contact information to include telephone number or electronic mail address. The label shall also list the name and business address of the manufacturer. The label shall be approved by the state fire council and conform to the following standards:

- (1) Numerals and letters of the printed matter shall be not less than one-eighth of an inch high;
- (2) Required statements shall be printed in a color that contrasts sharply with the background and shall be printed within a borderline; and
- (3) The label shall measure at least nine inches by nine inches; provided that if the size of the shell, mine, comet, or multiple tube device is too small to correctly display a label of this size, the label may be reduced to a size no smaller than necessary to properly display the information described in this section.

§132D- Display site inspection. Each county fire chief is authorized to conduct inspections of the persons conducting a display, including the site where the display is occurring or will occur within the fire chief's county to determine compliance with the applicable county code and the current editions of the National Fire Protection Association's "NFPA 1123: Code for Fireworks Display" and "NFPA 1126: Standard for the Use of Pyrotechnics Before a Proximate

Audience.” An inspection fee of \$200 shall be assessed by the county upon the holder of a permit for a display under section 132D-10(2), which shall be separate from the display permit fee under that section. The inspection fee shall be paid to the county in which the display will occur, and shall be used to defray the cost of the official conducting the inspection of the display setup.

§132D- Display stop order. A county fire chief is authorized to immediately revoke or suspend any permit issued under section 132D-16 for display of display fireworks, articles pyrotechnic, or aerial devices within the fire chief’s county for the following reasons:

- (1) Adverse climatic or atmospheric conditions;
- (2) The issuance of red flag warnings; or
- (3) Any other conditions determined to make the display potentially hazardous to persons or property.”

SECTION 2. Section 132D-2, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

““Movie” or “television production” means a series of activities that are directly related to the creation of visual and cinematic imagery to be delivered via film, videotape, or digital media and are to be sold, distributed, or displayed as entertainment or the advertisement of products for mass public consumption, including scripting, casting, set design and construction, transportation, videography, photography, sound recording, interactive game design, and post production.

“Permanent” means the state of one object being affixed to another object by glue or other means in a manner that the affixed object is intended to not be easily removable.

“Red flag warning” means a weather forecast issued by the National Weather Service indicating that weather conditions associated with the outbreak of wildfire may occur.

“Shipper” means an entity or person, including a freight forwarder, that is hired for the transport of aerial devices, articles pyrotechnic, consumer fireworks, display fireworks, or fireworks.”

SECTION 3. Section 132D-4, Hawaii Revised Statutes, is amended to read as follows:

“§132D-4 Permissible uses of display fireworks, articles pyrotechnic, and aerial devices. (a) Display fireworks, articles pyrotechnic, and aerial devices may be purchased, set off, ignited, or otherwise caused to explode in the State only if for display and permitted in writing pursuant to sections 132D-10 and 132D-16.

(b) Display fireworks, articles pyrotechnic, and aerial devices shall be set off, ignited, discharged, or otherwise caused to explode within the State only from 9:00 a.m. to 9:00 p.m.; provided that the applicable county fire chief may extend the time period for special events; provided further that the time restriction established in this subsection shall not apply to display fireworks, articles pyrotechnic, and aerial devices set off, ignited, discharged, or otherwise caused to explode within the State solely as part of a movie or television production.”

SECTION 4. Section 132D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All licenses required under section 132D-7 shall be issued by the county and shall be nontransferable. Licenses to import shall specify the date of issuance or effect and the date of expiration, which shall be March 31 of each

year. The application shall be made on a form setting forth the date upon which the importations are to begin, the address of the location of the importer, and the name of the proprietor or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the names of its officers. The application for a license to import display fireworks, articles pyrotechnic, or aerial devices shall include written documentation of the proposed display event and related contact information in a form prescribed by the applicable county. If the state fire council or county discovers at a later date that a licensee has been convicted of a felony under this chapter, the licensee's license shall be revoked and no new license shall be issued to the licensee for two years."

SECTION 5. Section 132D-8.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person who has obtained a license under section 132D-7 and ships fireworks or articles pyrotechnic into the State shall:

- (1) Clearly designate the types of fireworks or articles pyrotechnic in each shipment on the bill of lading or shipping manifest with specificity;
 - (2) Declare on the bill of lading or shipping manifest the gross weight of [~~aerial devices,~~] consumer fireworks, display fireworks, [~~and~~] articles pyrotechnic, and aerial devices to be imported in each shipment and the location of the storage facility, if applicable, in which the fireworks or articles pyrotechnic are to be stored;
 - (3) Prior to shipment and when booking each shipment of fireworks [~~or~~], display fireworks, articles pyrotechnic, or aerial devices notify the appropriate county official as determined by the county regarding whether the shipment will be distributed from:
 - (A) Pier to pier;
 - (B) Pier to warehouse or storage facility; or
 - (C) Pier to redistribution; [~~and~~]
 - (4) Prior to booking the shipment, provide to the applicable county fire chief:
 - (A) Written documentation regarding the proposed display event or events and related contact information to allow the fire chief to validate the importation of a three-month or six-month inventory under section 132D-8.5; and
 - (B) An inventory breakdown for each proposed display; and
- [~~(4)~~] (5) At the time shipping is booked, the importer or consignee shall notify the appropriate county official as determined by the county in writing of the expected shipment's landing date."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved June 15, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Special Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Pursuant to the federal Individuals with Disabilities Education Improvement Act of 2004 and chapter 60 of the Hawaii administrative rules, the department of education is required to provide to students who are eligible to receive special education and related services an array of placements in the least-restrictive environment. At times, private special education schools and programs provide at the department's expense placement opportunities for students with disabilities who are eligible to receive special education and related services.

The purpose of this Act is to provide definitions of various private special education schools and programs and the requirements for those schools and programs to accept students with disabilities at the department's expense.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Education of students with disabilities; private residential facilities; special education schools or programs; accreditation. (a) As used in this section:

“Accredited private special education school or program” means a private day school, private day program, or any preschool that has earned accreditation according to the requirements and procedures specified by the Western Association of Schools and Colleges, any Hawaii affiliate of the Western Association of Schools and Colleges, the Hawaii Association of Independent Schools, the National Association for the Education of Young Children, or the National Early Childhood Program for Accreditation.

“Certified or licensed private residential facility” means a private residential school or program that has earned licensure, certification, or accreditation according to requirements and procedures specified by the appropriate state licensure board or department.

“Nonpublic special education school or program” means any privately owned or operated preschool, school, educational organization or corporation, treatment facility, day program, residential program, or any other placement that maintains, conducts, or provides classes or programming, including related services as defined by federal or state laws, rules, or regulations, for the purpose of offering instruction or treatment to students with disabilities for consideration, profit, tuition, or fees.

(b) Any accredited private special education school or program, certified or licensed private residential facility, or nonpublic special education school or program that:

- (1) Provides education, treatment, programming, or related services to students with disabilities who are eligible to receive special education and related services pursuant to federal or state laws, rules, or regulations; and
- (2) Receives funding from the State, either directly or through parental reimbursement,

shall comply with all federal and state laws, rules, and regulations.

(c) Any nonpublic special education school or program that:

- (1) Is not accredited by the Western Association of Schools and Colleges, any Hawaii affiliate of the Western Association of Schools

and Colleges, the Hawaii Association of Independent Schools, the National Association for the Education of Young Children, or the National Early Childhood Program for Accreditation; and

- (2) Receives funding from the State, either directly or through parental reimbursement,

shall apply for accreditation within ninety days from the date of accepting a student with disabilities who was placed there as the result of a hearing officer's decision pursuant to section 302A-443, court order, settlement agreement, or placement by the department. Within the ninety-day application period, the nonpublic special education school or program shall provide proof of its application for accreditation to the department.

(d) The department may adopt rules pursuant to chapter 91 to implement this section."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 15, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 129

S.B. NO. 1284

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The department of education is required to pay for the private placement of students with disabilities in private special education schools and placements as a result of hearing officers' decisions, court orders, or programmatic placement. When a student with a disability is placed in a private school or placement, the department of education is often not allowed to monitor each student's progress and educational programming to ensure that each student is afforded the same opportunity to receive rigorous, standards-based instruction and curriculum that are aligned with the Common Core State Standards that are provided to their peers in public schools. Some private placements are not in compliance with federal, state, and county health and safety laws, rules, regulations, and requirements.

The department of education is also charged high-cost tuition and fees for services by private placements. The department of education should pay reasonable tuition and fees for services.

The purpose of this Act is to:

- (1) Provide the department of education with the authority to monitor students with disabilities who are placed in private schools or placements;
- (2) Require private schools or placements to allow the department of education access to exercise its authority to monitor students;
- (3) Require certain private schools or placements to post itemized rates, fees, and tuition each April;

- (4) Require certain private schools or placements to charge the department of education the same rates, fees, and tuition charged to parents who unilaterally place a student at the school;
- (5) Require the department of education to pay only for private school or placement services that are specified in a student's individualized education program; and
- (6) Require the department of education to withhold payment to any private school or placement that restricts or denies monitoring of students by the department of education under this Act.

SECTION 2. Section 302A-443, Hawaii Revised Statutes, is amended to read as follows:

“§302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability. (a) An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the department, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested:

- (1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and
 - (2) Notwithstanding paragraph (1), within one hundred and eighty calendar days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.
- (b) Subsection (a) shall not apply to a parent or guardian of a child with a disability if the parent or guardian was prevented from requesting the hearing due to:

- (1) Specific misrepresentations by the department that it had resolved the problem that formed the basis of the complaint; or
 - (2) The department's withholding from the parent or guardian information that was required by state or federal laws and regulations to provide a free, appropriate public education to a child with a disability.
- (c) The department shall adopt rules that conform to the requirements of any applicable federal statutes or regulations pertaining to the impartial hearing based on the education of a child with a disability. The rules shall provide that any party may be present at the proceeding, be accompanied and advised by counsel or individuals with special knowledge or training with respect to the problems of children with a disability, may require witnesses to be under oath, cross-examine witnesses, and obtain a written or electronic verbatim record of the proceedings.

(d) Any party to these hearings or the hearings officer shall have the right to compel the attendance of witnesses upon subpoena issued by the hearings officer. The fees for attendance shall be the same as for the fees of witnesses before circuit court. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the witness resides, upon application of the hearings officer, shall compel attendance of the person.

(e) No later than twenty days prior to the convening of each regular session of the legislature, the department shall submit a report that provides the total number of requests for a due process hearing relating to the reimbursement of costs for a child's placement filed by a parent or guardian of a child with a disability.

(f) The department shall ~~exercise oversight and monitoring of~~ be authorized to monitor any child eligible to receive special education and related

services who [has undergone unilateral special education placement as soon as practicable after the placement.] is placed, whether as the result of a hearing officer's decision, court order, or programmatic placement, at the department's expense, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, in any private school or placement as defined by federal and state law, including any implementing regulations or rules, relating to students with disabilities. Any private school or placement that receives funding from the department for the placement of a student with a disability, whether the funding is by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall allow the department access to exercise its authority under this subsection to monitor any student placed at the private school or placement. Monitoring under this subsection shall include but not be limited to:

- (1) The monitoring of all private schools and placements to ensure compliance with all applicable federal, state, and county laws, rules, regulations, and ordinances pertaining to health and safety;
 - (2) The monitoring of all students with disabilities placed in a private school or placement to ensure that:
 - (A) Each student is receiving academic education, instruction, and programming as required by the student's individualized education program; and
 - (B) The curriculum and instruction are rigorous, based on content standards, and aligned with the Common Core State Standards;
 - (3) The direct observation of a student with a disability placed in a private school or placement, with or without notice to the private school or placement;
 - (4) The review of all records, notes, or documentation related to students with disabilities placed in a private school or placement; and
 - (5) The right of the department to talk to the student's teachers at the private school or placement at reasonable times.
- (g) Any private school or placement that receives funds from the department, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall post with the department by April of each year, the itemized rates, fees, and tuition to be charged for the following school year and shall charge the department the same itemized rates, fees, or tuition it charges parents, legal guardians, or legal custodians who unilaterally place a student at its school, program, or facility. The department shall only pay for services that are specified in a student's individualized education program.
- (h) Any private school or placement that receives funds from the department, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall provide copies of a student's records to the department within three business days of receipt of a request for such records.
- (i) The department shall withhold payment to any private school or placement that restricts or denies monitoring by the department pursuant to its authority under subsection (f).
- (j) Subsections (f) through (i) shall not apply to those schools that are full and accredited members in good standing of the Hawaii Association of Independent Schools; provided that the department may monitor any child at such schools eligible to receive special education and related services at the department's expense.
- (k) The department may adopt rules pursuant to chapter 91 to effectuate subsection (f)."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 15, 2011.)

ACT 130

S.B. NO. 1174

A Bill for an Act Relating to Charter Schools.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that during the 2010 regular session, the legislature adopted Senate Concurrent Resolution No. 108, S.D. 2, requesting the convening of a task force to establish a consistent funding formula, process, or both, by which equitable funding to charter schools could be determined. Facilities funding for charter schools is a critically important issue, but the legislature recognizes that the establishment of a needs-based facilities funding formula is a work in progress.

The legislature further finds that as charter schools continue to become a visible component of the education system in Hawaii, it is imperative to ensure that charter schools function in an efficient and cost-effective manner.

The purpose of this Act, therefore, is to:

- (1) Require the Charter School Administrative Office to include with the budget and capital improvement projects request, a detailed explanation of the formula used for needs-based facilities funding requests and a funding request breakdown by school;
- (2) Permit charter schools to appeal a denial of reauthorization by the charter school review panel to the board of education;
- (3) Require charter schools and their local school boards to develop internal policies and procedures consistent with ethical standards of conduct;
- (4) Change the frequency of each charter school's evaluation to every six years from every five years after the initial evaluation; and
- (5) Establish a task force on charter school governance, accountability, and authority to provide clarity to the relationships, responsibilities, and lines of accountability and authority among stakeholders of the charter school system.

SECTION 2. Section 302B-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The executive director, under the direction of the panel and in consultation with the charter schools, shall be responsible for the internal organization, operation, and management of the charter school system, including:

- (1) Preparing and executing the budget and the capital improvement projects request for the charter schools, including submission of the all means of finance budget request that reflects all anticipated expenditures to the panel, the board, the governor, and the legislature; provided that, in preparing the budget request with regard to needs-based facilities funding, the executive director shall ensure that,

as a budget item separate from other operating costs, the request [provides:

- (A) Funding for projected enrollment for the next school year for each charter school;
- (B) A calculation showing the per pupil funding based on the department of budget and finance's debt service appropriation for the department of education divided by the department of education's actual enrollment that school year; and
- (C) That no less than seventy per cent of the amount appropriated shall be allocated by the office to start-up charter schools on a per pupil basis; provided that the funds remaining shall be allocated to charter schools with facilities needs as recommended by the office and approved by the panel;]

is accompanied by a detailed explanation of the formula used and a funding request breakdown by school:

- (2) Allocating annual appropriations to the charter schools and distribution of federal funds to charter schools;
- (3) Complying with applicable state laws related to the administration of the charter schools;
- (4) Preparing contracts between the charter schools and the department for centralized services to be provided by the department;
- (5) Preparing contracts between the charter schools and other state agencies for financial or personnel services to be provided by the agencies to the charter schools;
- (6) Providing independent analysis and recommendations on charter school issues;
- (7) Representing charter schools and the charter school system in communications with the board, the governor, and the legislature;
- (8) Providing advocacy, assistance, and support for the development, growth, progress, and success of charter schools and the charter school system;
- (9) Providing guidance and assistance to charter applicants and charter schools to enhance the completeness and accuracy of information for panel review;
- (10) Assisting charter applicants and charter schools in coordinating their interactions with the panel as needed;
- (11) Assisting the panel to coordinate with charter schools in panel investigations and evaluations of charter schools;
- (12) Serving as the conduit to disseminate communications from the panel, the board, and the department to all charter schools;
- (13) Determining charter school system needs and communicating those needs to the panel, the board, and the department;
- (14) Establishing a dispute resolution and mediation process; and
- (15) Upon request by one or more charter schools, assisting in the negotiation of a collective bargaining agreement with the exclusive representative of its employees."

PART II

SECTION 3. Section 302B-3, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) The powers and duties of the panel shall be to:

- (1) Appoint and evaluate the executive director and approve staff and salary levels for the charter school administrative office;

- (2) Review, approve, or deny charter applications for new charter schools in accordance with section 302B-5 for the issuance of new charters; provided that applicants that are denied a charter may appeal to the board for a final decision pursuant to section 302B-3.5;
- (3) Review, approve, or deny significant amendments to detailed implementation plans to maximize the school's financial and academic success, long-term organizational viability, and accountability. Charter schools that are denied a significant amendment to their detailed implementation plan may appeal to the board for a final decision pursuant to section 302B-3.5;
- (4) Pursuant to section 302B-3.6, compile and submit prioritized lists of charter schools to the department and enter into necessary agreements with the department to authorize charter schools to use and occupy vacant public school facilities or portions of school facilities;
- (5) Adopt reporting requirements for charter schools;
- (6) Review annual self-evaluation reports from charter schools and take appropriate action;
- (7) Adopt a clear process and rigorous organizational and educational criteria, including student achievement as a significant factor, for the authorization and reauthorization of school charters;
- (8) Evaluate each school charter, for the purpose of determining reauthorization, no later than four years following the initial issue of a charter and every six years thereafter; provided that charter schools that are denied reauthorization may appeal to the board for a final decision pursuant to section 302B-3.5;
- (9) Evaluate any aspect of a charter school that the panel may have concerns with and take appropriate action, which may include special monitoring, temporary withholding of an allocation for non-compliance issues, probation, or charter revocation; provided that charter schools that have their charter revoked may appeal to the board for a final decision pursuant to section 302B-3.5;
- (10) Periodically adopt improvements in the panel's monitoring and oversight of charter schools;
- (11) Periodically adopt improvements in the office's support of charter schools and management of the charter school system;
- (12) Review, modify, and approve charter schools' all means of finance budget, based upon criteria and an approval process established by the panel;
- (13) Survey all charter school facilities prior to, and in preparation for, determining recommendations to allocate non-per-pupil facilities funds to charter schools with facilities needs. The survey shall include, at minimum, for each charter school facility:
 - (A) The current status of the facility;
 - (B) Facilities costs, including all rents, leases, purchases, and repair and maintenance for lands and buildings;
 - (C) A prioritized list of facilities needs;
 - (D) Any capital improvement projects underway or scheduled; and
 - (E) Whether the facility is a conversion or start-up charter school, and current and projected enrollment; ~~and~~
- (14) Evaluate and investigate charter schools when concerns arise that necessitate the resolution or assistance with the resolution of legal, fiscal, health, safety, and other serious issues[-]; and

- (15) Ensure that local school boards are fulfilling their oversight responsibilities pursuant to section 302B-7.”

SECTION 4. Section 302B-3.5, Hawaii Revised Statutes, is amended to read as follows:

“~~§302B-3.5~~ Appeals; charter school applications, reauthorizations, revocations, or detailed implementation plan amendments. The board shall have the power to decide appeals from decisions of the panel to deny the approval of a charter school application, deny reauthorization of a charter school, revoke a charter school’s charter, or deny the approval of an amendment to a charter school’s detailed implementation plan. An appeal shall be filed with the board within twenty-one calendar days of the receipt of the notification of denial or revocation. Only a party whose charter school application has been denied, whose reauthorization has been denied, whose charter has been revoked, or whose amendment to a detailed implementation plan has been denied may initiate an appeal under this section for cause. The board shall review an appeal and issue a final decision within sixty calendar days of the filing of the appeal. The board may adopt applicable rules and procedures pursuant to chapter 91 for implementing the appeals process.”

SECTION 5. Section 302B-7, Hawaii Revised Statutes, is amended as follows:

“§302B-7 Charter school local school boards; powers and duties. (a) All local school boards, with the exception of those of conversion charter schools that are managed and operated by a nonprofit organization pursuant to section 302B-6(e), shall be composed of, at a minimum, one representative from each of the following participant groups:

- (1) Principals;
- (2) Instructional staff members selected by the school instructional staff;
- (3) Support staff selected by the support staff of the school;
- (4) Parents of students attending the school selected by the parents of the school;
- (5) Student body representatives selected by the students of the school; and
- (6) The community at large.

(b) No chief executive officer, chief administrative officer, executive director, or otherwise designated head of a school may serve as the chair of the local school board.

(c) The local school board shall be the autonomous governing body of its charter school and shall have oversight over and be responsible for the financial and academic viability of the charter school, implementation of the charter, and the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws. The local school board shall have the power to negotiate supplemental collective bargaining agreements with the exclusive representatives of their employees.

(d) Local school boards shall be exempt from chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Charter schools are encouraged to use the provisions of chapter 103D wherever possible; provided that the use of one or more provisions

of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school to any other provision of chapter 103D.

(e) Charter schools and their local school boards shall be exempt from the requirements of chapters 91 and 92. The local school boards shall:

- (1) Make available the notices and agendas of public meetings:
 - (A) At a publicly accessible area in the local school board's office or the charter school administrative office so as to be available for review during regular business hours; and
 - (B) On the local school board's or charter school's internet website and the charter school administrative office's internet website not less than six calendar days prior to the public meeting, unless a waiver is granted by the executive director in the case of an emergency; and
- (2) Make available the minutes from public meetings on a timely basis ~~[in:]~~ and maintain a list of the current names and contact information of the local school board's members and officers:
 - (A) ~~[The]~~ In the local school board's office or the charter school administrative office so as to be available for review during regular business hours; and
 - (B) On the local school board's or charter school's internet website~~;~~ and the charter school administrative office's internet website.

(f) Charter schools and their local school boards shall develop internal policies and procedures consistent with ethical standards of conduct, pursuant to chapter 84.

~~[(f)]~~ (g) The State shall afford the local school board of any charter school the same protections as the State affords the board."

SECTION 6. Section 302B-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The panel shall conduct a multi-year evaluation of each charter school on its fourth anniversary year and every ~~[five]~~ six years thereafter. The panel may from time to time establish a schedule to stagger the multi-year evaluations."

SECTION 7. (a) There is established within the charter school administrative office for administrative purposes only, a task force on charter school governance, accountability, and authority. The purpose of the task force shall be to provide clarity to the relationships, responsibilities, and lines of accountability and authority among stakeholders of the charter school system.

- (b) The task force shall consist of the following members:
 - (1) The chair of the senate committee on education, or the chair's designee;
 - (2) The chair of the house of representatives committee on education, or the chair's designee;
 - (3) A representative from the office of the governor;
 - (4) The state ethics commissioner, or the commissioner's designee;
 - (5) A member of the board of education;
 - (6) The superintendent of education, or the superintendent's designee;
 - (7) The executive director of the charter school administrative office, or the executive director's designee;
 - (8) The chair of the charter school review panel, or the chair's designee;

- (9) A representative from Kamehameha Schools;
 - (10) A representative from the Ho'okako'o Corporation;
 - (11) The executive director of the Hawaii Charter Schools Network, or the executive director's designee; and
 - (12) A representative from the Hawaii Charter Schools Network.
- (c) The chair of the senate committee on education and the chair of the house of representatives committee on education, or their designees, shall serve as co-chairs of the task force.
- (d) The task force shall:
- (1) Develop legislation or administrative rules that clearly and definitively designate the governance structure and authority between and among key charter school organizations and the department of education, the board of education, and the office of the governor;
 - (2) Identify how the governance structure connects and relates to the state education agency and local education agency;
 - (3) Identify oversight and monitoring responsibilities of the charter school review panel, the charter school administrative office, and the local school boards and develop a process for enforcement; and
 - (4) Discuss funding-related issues, including but not limited to appropriate funding levels for the charter school administrative office.
- (e) The charter school administrative office shall provide administrative support, if necessary, to the task force.
- (f) The task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2012.

PART III

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 15, 2011.)

ACT 131

S.B. NO. 823

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide procurement authority to semi-autonomous county public transit agencies, including the agency known as the Honolulu authority for rapid transportation, to allow them to function as semi-autonomous agencies of their respective counties.

SECTION 2. Section 103D-203, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The chief procurement officers for each of the several counties shall be:

- (1) The executive branch—the respective finance directors of the several counties, except as provided in paragraphs (3) ~~and~~, (4)[5], and (5);

- (2) The legislative branch—the respective chairpersons of the councils of the several counties;
- (3) The Honolulu, Kauai, and Maui boards or departments of water supply—the managers and chief engineers of the respective boards or departments of water supply as designated by county charter; ~~and~~
- (4) The Hawaii board of water supply—the manager of the board of water supply as designated by county charter; and
- (5) The semi-autonomous public transit agency—the director of the agency as designated by county charter;

provided that the chief procurement officers designated under paragraphs (1), (2), (3), ~~and~~ (4), and (5) shall not exercise their powers or duties over contracting in a manner contrary to the respective county’s charter, ordinances, or rules adopted in accordance with chapter 91.

(c) For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, University of Hawaii, department of education, remaining departments of the executive branch and all governmental bodies administratively attached to them, and the several counties, unless otherwise expressly provided, “State” shall mean “judiciary”, “state senate”, “state house of representatives”, “office of Hawaiian affairs”, “University of Hawaii”, “department of education”, “executive branch”, “county”, ~~and~~ “board of water supply”^[5] or “department of water supply”, and “semi-autonomous public transit agency”, respectively.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 16, 2011.)

ACT 132

H.B. NO. 953

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-621, Hawaii Revised Statutes, is amended to read as follows:

“§302A-621. Salary; deputy superintendent, assistant superintendents, complex area superintendents. The salaries of the deputy superintendent, assistant superintendents, and complex area superintendents shall be set by the board; provided that the salaries of the deputy superintendent, assistant superintendents, and the complex area superintendents shall not exceed ~~[eighty per cent of]~~ the superintendent’s salary.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 20, 2011.)

ACT 133

S.B. NO. 1282

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The recent implementation of the common core state standards initiative led by the National Governors Association Center for Best Practices and the Council of Chief State School Officers, has resulted in a set of common core state standards in English language arts and mathematics that have been developed by teachers, school administrators, and experts to provide a clear and consistent framework to prepare students for college and the workforce. These standards define the knowledge and skills students should possess within their K-12 education careers so that they will graduate from high school with the ability to succeed in entry-level, credit-bearing academic college courses and in workforce training programs. Therefore, once the common core state standards are implemented, the administration of nationally norm-referenced tests will no longer be necessary.

The board of education has adopted the common core state standards and Hawaii is a governing member of the SMARTER Balanced Assessment Consortium that will be developing and implementing a summative assessment in grades three through eight and high school in English language arts and mathematics that will provide comparable achievement standards across all of the states that are members of the Consortium.

The purpose of this Act is to allow individual schools and complexes to administer nationally norm-referenced tests in any content area at the school or complex's own expense, until July 1, 2015, after which time the common core state standards will be fully implemented.

SECTION 2. Section 302A-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding any law to the contrary, ~~[the department shall establish procedures and guidelines for, and shall]~~ any public school or complex may expand[, its] the statewide assessment program to include norm-referenced testing in the same grades as required by the federal No Child Left Behind Act of 2001 (Public Law 107-110) standards-based assessment (grades 3 through 8 and one grade in high school) in [reading and math,] any content area using the most appropriate nationally normed test[-]; provided that the school or complex shall be responsible for all contracts and costs relating to the procurement, purchase, administration, scoring, and reporting of the nationally normed tests under this section.”

SECTION 3. Section 302A-201, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-201 Statewide performance standards.** ~~[(a)]~~ The board shall establish statewide performance standards and the means to assess the standards based upon the recommendations in the final report of the performance standards commission established pursuant to Act 334, Session Laws of Hawaii 1991; provided that the board may review and modify the performance standards, as the board deems necessary, to reflect the needs of public school students and educational goals adopted by the board.

~~[(b) Notwithstanding any law to the contrary, the department shall establish procedures and guidelines for, and shall expand, its statewide assessment~~

~~program to include norm-referenced testing in the same grades as required by the federal No Child Left Behind Act of 2001 (Public Law 107-110) standards-based assessment (grades 3 through 8 and one grade in high school) in reading and math, using the most appropriate nationally normed test.]”~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that section 302A-201(b), Hawaii Revised Statutes, as amended by section 2 of this Act, shall be repealed on June 30, 2015; provided further that section 302A-201, Hawaii Revised Statutes, as amended by section 3 of this Act, shall take effect on July 1, 2015.

(Approved June 20, 2011.)

ACT 134

S.B. NO. 806

A Bill for an Act Relating to Teachers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-801, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Appointed board members shall serve not more than three consecutive three-year terms. Teacher and educational officer members who retire during a term may serve the remainder of their term up to three consecutive three-year terms.”

SECTION 2. Section 302A-803, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to establishing standards for the issuance and renewal of licenses and any other powers and duties authorized by law, the board’s powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, or repealing the rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations, and state and federal funds;
- (4) Submitting an annual report to the governor, the legislature, and the board of education on the board’s operations and expenditures, and from the 2007-2008 school year, submitting a summary report every five years of the board’s accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing fees in accordance with chapter 91 and determining the manner by which fees are collected and subsequently deposited into the state treasury and credited to the Hawaii teacher standards board special fund;
- (7) Establishing penalties in accordance with chapter 91;
- (8) Issuing, renewing, forfeiting, restoring, conditioning, revoking, suspending, and reinstating licenses;

- (9) Developing criteria for a full career and technical education license, limited to career and technical education teaching assignments, allowing qualified individuals with at least an associate's degree, pedagogy coursework, industry experience, and content expertise to teach;
- ~~[(9)]~~ (10) Reviewing reports from the department on individuals hired on an emergency basis;
- ~~[(10)]~~ (11) Applying licensing standards on a case-by-case basis and conducting licensing evaluations;
- ~~[(11)]~~ (12) Preparing and disseminating teacher licensing information to schools and operational personnel;
- ~~[(12)]~~ (13) Approving teacher preparation programs;
- (14) Establishing policies and procedures for approving alternative pathways to teaching;
- ~~[(13)]~~ (15) Administering reciprocity agreements with other states relative to licensing;
- ~~[(14)]~~ (16) Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;
- ~~[(15)]~~ (17) Participating in efforts relating to teacher quality issues, professional development related to the board's standards, and promotion of high teacher standards and accomplished teaching;
- ~~[(16)]~~ (18) Adopting applicable rules and procedures; and
- ~~[(17)]~~ (19) Adopting, amending, repealing, or suspending the policies and standards of the board."

SECTION 3. Section 302A-805, Hawaii Revised Statutes, is amended to read as follows:

"§302A-805 Teachers; license required; renewals. Beginning July 1, 2002, all new licenses shall be issued by the board. No person shall serve as a half-time or full-time teacher in a public school without first having obtained a license from the board under this subpart. All licenses issued by the board shall be valid only for the fields specified on the licenses and shall be renewable every five years for a standard license and every ten years for an advanced license if the individual continues to:

- (1) Satisfy the board's licensing standards and submits verification, in a form specified by the board, that the individual has completed activities specified by the board in fulfillment of each of the teacher performance standards established by the board;
- (2) Show evidence of successful teaching in the previous five years through verification by a supervisor, in a form specified by the board;
- (3) Meet the professional fitness requirements established by the board; ~~[and]~~
- (4) Satisfy the board's requirements for renewal of licenses~~[-]; and~~
- (5) Pay all applicable license fees in a timely manner.

The board shall randomly audit a licensee's compliance with paragraph (1) and may establish rules, pursuant to chapter 91, for the random audits.

Teachers whose licenses expire on June 30, 2002, or June 30, 2003, shall be granted an automatic extension of two years.

No person shall be issued a license or teach on an emergency basis in the public schools without having first paid the fees established by the board in accordance with chapter 91.

The failure to timely renew a license, pay all fees in a timely manner, or comply with any other requirement provided by law or administrative rule shall result in the automatic forfeiture of the license. A person with a forfeited license shall not teach at a public school until that person's license is restored. Restoration of a license shall require compliance with the renewal requirements provided by law or administrative rule and payment of all applicable renewal and late fees. Upon restoration of a person's license, the person may teach at a public school."

SECTION 4. Section 302A-807, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) The board shall serve as the final adjudicator for appeals relating to licensing, including the issuance or nonissuance of licenses, and the condition, suspension, nonrenewal, and revocation of licenses.

(b) The board shall establish procedures for the conduct of proceedings for the consideration of requests filed with the board. In every case to condition, revoke, or suspend a license, the board shall give the person concerned written notice that a request has been filed with the board. The board shall conduct a hearing in conformity with chapter 91, and shall provide for confidentiality of the proceedings to protect the parties. In all proceedings before it, the board may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the board or to any subpoena issued by the board, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license, or any licensee whose license has been conditioned, suspended, or revoked, shall have the right to appeal the board's decision to the circuit court of the circuit in which the applicant or licensee resides in the manner provided in chapter 91; provided that out-of-state resident applicants shall file their appeals in the first circuit court."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 20, 2011.)

ACT 135

S.B. NO. 1068

A Bill for an Act Relating to Animal Cruelty.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 711-1108.5, Hawaii Revised Statutes, is amended to read as follows:

"§711-1108.5 Cruelty to animals in the first degree. (1) A person commits the offense of cruelty to animals in the first degree if the person intentionally or knowingly [~~tortures~~];

- (a) Tortures, mutilates, or poisons or causes the torture, mutilation, or poisoning of any pet animal or equine animal resulting in serious bodily injury or death of the pet animal or equine animal[-]; or
- (b) Kills or attempts to kill any pet animal belonging to another person, without first obtaining legal authority or the consent of the pet animal's owner.
- (2) Subsection ~~[(4)]~~ (1)(a) shall not apply to:
 - (a) Accepted veterinary practices;
 - (b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or
 - (c) Cropping or docking as customarily practiced.
- (3) Subsection (1)(b) shall not apply to:
 - (a) Humane euthanasia of any animal by an animal control officer, duly incorporated humane society, duly incorporated society for the prevention of cruelty to animals, or duly authorized governmental agency in accordance with American Veterinary Medical Association accepted standards; or
 - (b) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to the actor, another person, or an animal; provided that the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by this section and is justifiable as provided in section 703-302 for choice of evils; provided further that, for purposes of this paragraph, as the justification described in section 703-302 shall also apply to conduct which the actor believes to be necessary to avoid an imminent harm or evil to an animal.

~~[(3)]~~ (4) Whenever any pet animal or equine animal is so severely injured that there is no reasonable probability that its life can be saved, the animal may be immediately destroyed without creating any offense under this section.

~~[(4)]~~ (5) Cruelty to animals in the first degree is a class C felony.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

ACT 136

S.B. NO. 1489

A Bill for an Act Relating to Attorney's Liens.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 507-81, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) An attorney has a lien upon:

- (1) Actions, suits, and proceedings after commencement of the action[-] or arbitration proceeding;

- (2) Judgments, decrees, orders, settlements, and awards entered by the court or an arbitrator in favor of the client; and
- (3) Any proceeds paid in satisfaction of the judgment, decree, order, settlement, or award.”

2. By amending subsection (d) to read:

“(d) When the attorney’s lien attaches to a judgment, decree, order, settlement, or [decree] award allowing or enforcing a client’s lien, the attorney’s lien has the same priority as the client’s lien with regard to personal or real property subject to the client’s lien.”

3. By amending subsection (f) to read:

“(f) To be enforceable under this section, a notice of claim of the attorney’s lien shall be filed[:

- (1) ~~Before the complaint is dismissed by stipulation;~~
- (2) ~~Before the complaint is dismissed by order of the court; or~~
- (3) ~~Not later than one year after entry of final judgment is filed and disposition of any appeal thereof.] with the court or arbitrator, as the case may be.~~

4. By amending subsections (h) and (i) to read:

“(h) Except as provided by subsections (i) and (j), a party to the action, suit, or proceeding or any other person shall not have the right to discharge or dismiss any judgment, decree, order, settlement, or award entered in the action, suit, or proceeding until the lien and claim of the attorney for fees based thereon is satisfied in full.

(i) A ~~[judgment debtor] party~~ may pay the full amount of a judgment ~~[or], decree, order, settlement, or award~~ into court, and the clerk of the court shall thereupon fully satisfy the judgment ~~[or], decree, order, settlement, or award~~ on the record, and the ~~[judgment debtor] party~~ shall be thereby released from any further claims thereunder.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 20, 2011.)

ACT 137

S.B. NO. 1089

A Bill for an Act Relating to Dislocated Workers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 371-12, Hawaii Revised Statutes, is amended to read as follows:

“§371-12 **Labor law enforcement; injunction.** The department of labor and industrial relations shall:

- (1) Enforce the child labor provisions of this chapter;
- (2) Enforce this chapter relative to the regulation of commercial employment agencies;
- (3) Enforce any other labor laws enacted by the legislature of the State;
- (4) Enforce the provisions of section 394B-9 regarding dislocated workers;

- ~~[(4)]~~ (5) Enforce any rules or regulations of the department. The department may institute proceedings to enjoin any employer from violating this chapter or the rules or regulations of the department when any such employer is violating any such provision or is threatening to do so and the circuit courts are hereby vested with jurisdiction in the premises;
- ~~[(5)]~~ (6) Conduct investigations in connection with the foregoing; and
- ~~[(6)]~~ (7) Perform such additional duties as the director of labor and industrial relations shall by rule prescribe.”

SECTION 2. Section 394B-9, Hawaii Revised Statutes, is amended to read as follows:

“§394B-9 Notification; penalty. (a) An employer in a covered establishment shall provide to each employee and the director written notification of a closing, divestiture, partial closing, or relocation at least sixty days prior to its occurrence.

(b) An employer that violates this section shall be liable to each affected employee for an amount equal to back pay and benefits for the period of violation not to exceed sixty days. This liability may be reduced by any:

- (1) Wages the employer pays during the notice period; and
- (2) Voluntary and unconditional payment not required by a legal obligation.

(c) An employer of a covered establishment that is actively seeking a buyer for a sale, transfer, or merger shall not be required to provide the notice required under subsection (a) until the employer has entered into a binding agreement for the sale, transfer, or merger of the covered establishment that results in a divestiture.

(d) An employer who fails to provide notice under this section shall be subject to a civil penalty not to exceed \$500 for each day of the violation and the amount shall be deposited in the employment and training fund under section 383-128; provided that the employer may avoid the penalty if the employer satisfies its liability to each affected employee within three weeks after the closing. In any suit, the court, in its discretion, may award the prevailing party reasonable attorney’s fees and costs.

(e) The department shall enforce this section and shall have all the powers and duties conferred and imposed upon it pursuant to section 371-12.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

ACT 138

H.B. NO. 747

A Bill for an Act Relating to Liquor Liability Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (r) to read as follows:

“(r) Restaurants, ~~[retailers,]~~ retail dealers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, condominium hotels, and bring-your-own-beverage establishments licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, and class 17 shall maintain at all times liquor liability insurance coverage in an amount not less than \$1,000,000; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee’s regular business hours. In the event of a licensee’s failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

~~[For purposes of this subsection:~~

~~“Convenience minimarts” commonly refer to a neighborhood “mom and pop store”.]~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

ACT 139

H.B. NO. 663

A Bill for an Act Relating to Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 481, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§481- **Automatic renewal clauses.** (a) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that has a specified term of more than one month and an automatic renewal clause under which the contract will automatically renew for a specified term of more than one month unless the consumer cancels the contract, shall disclose the automatic renewal clause and the procedure by which the consumer can cancel automatic renewal of the consumer contract clearly and conspicuously in the consumer contract.

(b) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that has a specified contract term of twelve months or more, under which the contract will automatically renew for a specified term of more than one month unless the consumer cancels the consumer contract, shall notify the consumer clearly and conspicuously:

- (1) That the consumer contract will automatically renew unless the consumer cancels the contract;
- (2) How to cancel the contract; and
- (3) The deadline by which the consumer shall respond to cancel the consumer contract and prevent automatic renewal.

The notice provided to the consumer under this subsection shall be sent to the consumer no less than thirty days and no more than sixty days before the date upon which the consumer shall respond under paragraph (3).

(c) The notice to the consumer required by this section may be provided electronically if the:

- (1) Transaction for sale of products or services was conducted electronically at the election of the consumer and in compliance with the requirements of chapter 489E, the uniform electronic transactions act; or
- (2) Consumer elects to receive electronic communications and provides a valid electronic-mail address for the purpose of receiving the notice required by this section.

(d) Any person who knowingly violates this section or who knowingly fails to cancel an automatic renewal contract upon consumer request shall be deemed to have engaged in an unfair method of competition and unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.

(e) This section shall not apply to any:

- (1) Financial institution subject to chapter 412 to the extent that the financial institution is engaged in activities regulated pursuant to chapter 412; and
- (2) Insurer subject to chapter 431, 432, or 432D to the extent that the insurer is engaged in activities regulated pursuant to those chapters.

(f) For purposes of this section:

“Clearly and conspicuously” means in larger type than the surrounding text; in contrasting type, font, or color to the surrounding text of the same size; or set off from the surrounding text of the same size by symbols or other marks in a manner that clearly calls attention to the language. In the case of an audio disclosure, “clear and conspicuous” and “clearly and conspicuously” mean in a volume and cadence sufficient to be readily audible and understandable.

“Consumer” shall have the same meaning as in section 480-1.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval; provided that section 1 shall take effect on July 1, 2012.

(Approved June 20, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Family Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 580-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When a complaint for annulment, divorce, or separation[~~;~~] is filed in this State, [~~the court,~~] on an application by either party, supported by affidavit or a statement made under penalty of perjury, the court, without a hearing, [~~may enjoin~~] shall:

- (1) Order each of the parties to that action to timely provide to the other party full financial and property disclosure on forms provided by the court; and
- (2) Order and restrain each of the parties to that action from transferring, encumbering, wasting, or otherwise disposing of any of their property, whether real, personal, or mixed, over and above current income, except as necessary for the ordinary course of a business or for usual current living expenses, without the consent and concurrence of the other party to such action for divorce, or further specific order of the court. Where [~~such~~] restraining orders are issued against the other party to the action, [~~such person~~] the non-filing party shall be served promptly with the financial restraining order and shall be entitled to a prompt hearing to show cause why [~~such~~] the order should not be enforced.”

SECTION 2. Section 580-47, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Upon granting a divorce, or thereafter if, in addition to the powers granted in subsections (c) and (d), jurisdiction of those matters is reserved under the decree by agreement of both parties or by order of court after finding that good cause exists, the court may make any further orders as shall appear just and equitable (1) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties; (2) compelling either party to provide for the support and maintenance of the other party; (3) finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate; and (4) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether community, joint, or separate, and the attorney’s fees, costs, and expenses incurred by each party by reason of the divorce. In making these further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, the concealment of or failure to disclose income or an asset, or violation of a restraining order issued under section 580-10(a) or (b), if any, by either party, and all other circumstances of the case. In establishing the amounts of child support, the court shall use the guidelines established under section 576D-7. Provision may be made for the support, maintenance, and education of an adult or minor child and for the support, maintenance, and education of an incompetent adult child whether or not the petition is made before or after the child has attained the age of majority. In those cases where child support payments are to continue due to the adult child’s pursuance of education, the

agency, three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

In addition to any other relevant factors considered, the court, in ordering spousal support and maintenance, shall consider the following factors:

- (1) Financial resources of the parties;
- (2) Ability of the party seeking support and maintenance to meet his or her needs independently;
- (3) Duration of the marriage;
- (4) Standard of living established during the marriage;
- (5) Age of the parties;
- (6) Physical and emotional condition of the parties;
- (7) Usual occupation of the parties during the marriage;
- (8) Vocational skills and employability of the party seeking support and maintenance;
- (9) Needs of the parties;
- (10) Custodial and child support responsibilities;
- (11) Ability of the party from whom support and maintenance is sought to meet his or her own needs while meeting the needs of the party seeking support and maintenance;
- (12) Other factors which measure the financial condition in which the parties will be left as the result of the action under which the determination of maintenance is made; and
- (13) Probable duration of the need of the party seeking support and maintenance.

The court may order support and maintenance to a party for an indefinite period or until further order of the court; provided that in the event the court determines that support and maintenance shall be ordered for a specific duration wholly or partly based on competent evidence as to the amount of time which will be required for the party seeking support and maintenance to secure adequate training, education, skills, or other qualifications necessary to qualify for appropriate employment, whether intended to qualify the party for a new occupation, update or expand existing qualification, or otherwise enable or enhance the employability of the party, the court shall order support and maintenance for a period sufficient to allow completion of the training, education, skills, or other activity, and shall allow, in addition, sufficient time for the party to secure appropriate employment."

2. By amending subsection (f) to read:

"(f) Attorney's fees and costs. The court hearing any motion for orders either revising an order for the custody, support, maintenance, and education of the children of the parties, or an order for the support and maintenance of one party by the other, or a motion for an order to enforce any such order or any order made under subsection (a) of this section, may make such orders requiring either party to pay or contribute to the payment of the attorney's fees, costs, and

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expenses of the other party relating to such motion and hearing as shall appear just and equitable after consideration of the respective merits of the parties, the relative abilities of the parties, the economic condition of each party at the time of the hearing, the burdens imposed upon either party for the benefit of the children of the parties, the concealment of or failure to disclose income or an asset, or violation of a restraining order issued under section 580-10(a) or (b), if any, by either party, and all other circumstances of the case.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on October 1, 2011.

(Approved June 20, 2011.)

ACT 141

H.B. NO. 1333

A Bill for an Act Relating to Small Claims Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 633-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

- (1) Cases for the recovery of money only where the amount claimed ~~[does not exceed \$3,500]~~ does not exceed \$5,000 exclusive of interest and costs, except as provided by section 633-30;
- (2) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and
- (3) Cases for the return of leased or rented personal property worth ~~[\$3,500 or]~~ less than \$5,000 where the amount claimed owed for that lease or rental ~~[does not exceed \$3,500]~~ is less than \$5,000 exclusive of interest and costs.

This chapter shall not abridge or affect the jurisdiction of the district courts under paragraphs (1) and (3) to determine cases under the ordinary procedures of the court, it being optional with the plaintiff in the cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court. No case filed in the small claims division after December 31, 1991, shall be removed from the small claims division to be heard under the ordinary procedures of the district court unless the removal is agreed to by the plaintiff. In cases arising under paragraph (2), the jurisdiction of the small claims division of the district court shall be exclusive; provided that the district court, having jurisdiction over a civil action involving summary possession, shall have concurrent jurisdiction with the small claims division of the district court over any security deposit dispute between landlord and tenant in a residential

landlord-tenant relationship. This subsection shall not abrogate ~~and~~ or supersede sections 604-5, 633-30, and 633-31.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

ACT 142

H.B. NO. 1613

A Bill for an Act Relating to Voting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person qualified to and desiring to register as a voter in any county shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

- (1) Name;
- (2) Social security number;
- (3) Date of birth;
- (4) Residence, including mailing address;
- (5) That the residence stated in the affidavit is not simply because of the person’s presence in the State, but that the residence was acquired with the intent to make Hawaii the person’s legal residence with all the accompanying obligations therein; and
- (6) That the person is a citizen.

An application to register to vote shall include a space to request a permanent absentee ballot.”

SECTION 2. Section 11-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any qualified person unable for any cause to ~~present oneself~~ appear in person before the clerk for registration may register to vote by mail, not later than thirty days prior to a primary or general election, through the affidavit on application for voter registration or other form prescribed by the chief election officer. The form shall include a self-subscribing oath for the applicant to swear to the truth of the allegations in the application. An applicant unable to write for reason of illiteracy, blindness, or other physical disability shall have the applicant’s mark witnessed by a person who shall sign the affidavit in the space provided. Each application form shall also include a space to request a permanent absentee ballot. Application forms shall be made available to any qualified person through community groups, political parties, and other groups prescribed by the chief election officer. Application forms shall be made available to any qualified person at the time of that person’s driver’s license application or renewal through the examiner of drivers.”

SECTION 3. Section 15-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Any person registered to vote may request an absentee ballot or permanent absentee ballot in person or in writing from the clerk [~~not earlier than on the sixtieth day and~~] at any time but not later than 4:30 p.m. on the seventh day prior to the election. Any mailed requests for an absentee ballot or permanent absentee ballot shall be mailed by the person directly to the clerk. The clerk may waive any or all of the foregoing requirements in special cases as provided in the rules adopted by the chief election officer.

The request shall include information such as the person’s social security number, date of birth, and the address under which the person is registered to vote. The request shall also include the address to which the person wishes the requested ballot forwarded. The request, when made for any primary or special primary election, may include an additional request for an absentee ballot to be voted at any election immediately following the primary or special primary; provided the person so indicates in the person’s request.

Subsequent to the closing of registration for each election, the clerk may mail a request form for an absentee ballot and permanent absentee ballot to each voter in a remote area who has not already made such a request. The request form shall be accompanied by:

- (1) A stamped, self-addressed envelope; and
 - (2) Instructions regarding the manner of completing and returning the request form.”
2. By amending subsection (d) to read:

“(d) The chief election officer shall inform voters of the option of applying for permanent absentee voter status and shall provide any necessary form to request the permanent absentee ballot option to any registered voter requesting an absentee ballot[-] and any person applying to register to vote.”

SECTION 4. The office of elections shall continue to use its existing voter registration application forms where possible until such time as new forms are developed and printed by the office of elections to implement this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2011.
(Approved June 20, 2011.)

ACT 143

H.B. NO. 716

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to revise various election deadlines in conformity with Act 126, Session Laws of Hawaii 2010, which changed the date of the State’s primary election to comply with the National Defense Authorization Act for Fiscal Year 2010, P.L. 111-84, mandating the mailing of absentee ballots to uniformed and overseas voters no later than forty-five days prior to elections for federal offices.

SECTION 2. Section 11-113, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All candidates for president and vice president of the United States shall be qualified for inclusion on the general election ballot under either of the following procedures:

- (1) In the case of candidates of political parties [~~which~~] that have been qualified to place candidates on the primary and general election ballots, the appropriate official of those parties shall file a sworn application with the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election, which shall include:
 - (A) The name and address of each of the two candidates;
 - (B) A statement that each candidate is legally qualified to serve under the provisions of the United States Constitution; and
 - (C) A statement that the candidates are the duly chosen candidates of both the state and the national party, giving the time, place, and manner of the selection[-]; and
- (2) In the case of candidates of parties or groups not qualified to place candidates on the primary or general election ballots, the person desiring to place the names on the general election ballot shall file with the chief election officer not later than 4:30 p.m. on the ~~sixtieth~~ ninetieth day prior to the general election:
 - (A) A sworn application [~~which~~] that shall include the information required under paragraph (1)(A) [~~and~~], (B), and (C), where applicable; and
 - (B) A petition [~~which~~] that shall be upon the form prescribed and provided by the chief election officer containing the signatures of currently registered voters which constitute not less than one per cent of the votes cast in the State at the last presidential election. The petition shall contain the names of the candidates, a statement that the persons signing intend to support those candidates, the address of each signatory, the date of the signer’s signature, and other information as determined by the chief election officer.

Prior to being issued the petition form, the person desiring to place the names on the general election ballot shall submit a notarized statement from each prospective candidate of that [~~person’s~~] prospective candidate’s intent to be a candidate for president or vice president of the United States on the general election ballot ~~in~~ of the State of Hawaii. [~~Such~~] The statements by a prospective candidate for vice president may be withdrawn by [~~a~~] that prospective candidate [~~for vice president~~] and an alternative candidate for vice president may be substituted [~~anytime~~] any time prior to the notification of qualification or disqualification provided in subsection (d). Any [~~such~~] substitutions shall be accompanied by a notice of substitution satisfying subparagraph (A), a statement of intent as required by this paragraph, and a letter by the candidate for president endorsing the substitute candidate for vice president. Upon receipt of a notice of substitution and all other required documents, the substitute shall replace the original candidate for vice president on the general election ballot. The petitions issued in the names of the original candidates will remain valid for the purposes of this section.”

SECTION 3. Section 11-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any candidate may withdraw in writing not later than 4:30 p.m. on the day immediately following the close of filing for any reason and may withdraw after the close of filing up to 4:30 p.m. on the [~~twentieth~~] fiftieth day prior to an election for reasons of ill health. When a candidate withdraws for ill health, the candidate shall give notice in writing to the chief election officer if the candidate was seeking a congressional or state office, or the candidate shall give notice in writing to the county clerk if the candidate was seeking a county office. The notice shall be accompanied by a statement from a licensed physician or physician assistant indicating that such ill health may endanger the candidate’s life.”

SECTION 4. Section 11-119, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Whenever the chief election officer is responsible for the printing of ballots, unless provided otherwise, the exact wording to appear thereon, including[, ~~but not limited to,~~] questions and issues shall be submitted to the chief election officer not later than 4:30 p.m. on the [~~sixtieth~~] seventy-fifth calendar day prior to the applicable election.”

SECTION 5. Section 12-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) All nomination papers filed in conformity with section 12-3 shall be deemed valid unless objection is made thereto by a registered voter, an officer of a political party whose name is on file with the chief election officer, the chief election officer, or the county clerk in the case of a county office. All objections shall be filed in writing not later than 4:30 p.m. on the [~~thirtieth~~] sixtieth day or the next earliest working day prior to the primary or special election.”

2. By amending subsections (e) and (f) to read:

“(e) If the chief election officer or clerk in the case of county offices determines that the objection [~~may warrant~~] warrants the disqualification of the candidate, the chief election officer or clerk shall file a complaint in the circuit court for a determination of the objection; provided that [~~such~~] the complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the seventh working day after the objection was filed.

(f) If a political party objects to the nomination paper filed by a candidate because the candidate is not a member of the party pursuant to the party’s rules filed in conformance with section 11-63, an officer of the party whose name appears on file with the chief election officer shall file a complaint in the circuit court for a prompt determination of the objection; provided that the complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the [~~thirtieth~~] sixtieth working day or the next earliest working day prior to that election day.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

ACT 144

H.B. NO. 1107

A Bill for an Act Relating to the Hawaii National Guard.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Last year, President Barack Obama selected Honolulu as the site for the annual Asia-Pacific Economic Cooperation Leaders Meeting in November 2011. The Asia-Pacific Economic Cooperation is the premier forum for cooperation among Asia-Pacific economies on trade and investment issues.

The annual Asia-Pacific Economic Cooperation gathering is one of the world's largest intergovernmental meetings and is attended by heads of state, cabinet ministers, heads of the World Bank and World Trade Organization, and other business leaders. This will be the single largest gathering of distinguished world leaders in Hawaii's history.

Scheduled for the week beginning November 13, 2011, the meetings will be very beneficial for Hawaii's economy, as they are expected to draw more than ten thousand people to Honolulu and will provide a boost to the State's struggling tourism industry.

High profile events, such as the Asia-Pacific Economic Cooperation meetings, carry many security concerns. With security preparations already underway, it is in the State's best interest to maximize its security resources.

The purpose of this Act is to authorize members of the army and air national guard to use electric guns to support civil authorities in disaster relief, civil defense, or law enforcement functions.

SECTION 2. Chapter 121, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§121- Use of electric guns. Members of the army or air national guard who have been qualified by training and are authorized by their commanders may use electric guns, as specifically provided in section 134-16(c) and (d), when assisting civil authorities in disaster relief, civil defense, or law enforcement functions; provided that “training” for the purposes of this section means a course of instruction or training in the use of any electric gun authorized pursuant to this section, that is provided or authorized by the manufacturer or is manufacturer-approved or is an electric gun training program approved by the army or air national guard, prior to deployment or issuance of electric guns and related equipment.”

SECTION 3. Section 134-16, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) This section shall not apply to ~~law~~;

- (1) Law enforcement officers of county police departments~~[-law]~~;
- (2) Law enforcement officers of the department of public safety~~[-and conservation]~~;
- (3) Conservation and resources enforcement officers of the department of land and natural resources~~[-or vendors]~~;
- (4) Members of the army or air national guard when assisting civil authorities in disaster relief, civil defense, or law enforcement functions, subject to the requirements of section 121- ; and
- (5) Vendors providing electric guns to [those entities;] the individuals described in paragraphs (1) through (4);

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provided that electric guns shall at all times remain in the custody and control of the law enforcement officers of the county police departments, the law enforcement officers of the department of public safety, ~~[or]~~ the conservation and resources enforcement officers of the department of land and natural resources~~[-]~~, or the members of the army or air national guard.

(d) The county police departments of this State, the department of public safety, ~~[and]~~ the department of land and natural resources, and the army and air national guard shall maintain records regarding every electric gun in their custody and control. The records shall report every instance of usage of the electric guns; in particular, records shall be maintained in a similar manner as for those of discharging of firearms. The county police departments, the department of public safety, ~~[and]~~ the department of land and natural resources, and the army and air national guard shall annually report to the legislature regarding these records no later than twenty days before the beginning of each regular session of the legislature.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 145

H.B. NO. 240

A Bill for an Act Relating to Promoting Prostitution.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 28-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The attorney general shall establish a statewide witness program through which the attorney general may fund or provide for the security and protection of a government witness or a potential government witness in an official proceeding or investigation where the attorney general determines that an offense such as those described in ~~[sections]~~ section 710-1071 (intimidating a witness), 710-1072 (tampering with a witness), or 710-1072.2 (retaliating against a witness) is likely to be committed or which involves great public interest. The attorney general may also fund or provide for the security and protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered. In determining whether ~~[such]~~ the funds or security and protection ~~[or funds]~~ are to be provided, the attorney general shall give greatest priority to official proceedings or investigations involving pending or potential organized crime, racketeering activity, promoting prostitution, or career criminal prosecutions.”

PART II

SECTION 2. Section 712-1201, Hawaii Revised Statutes, is amended to read as follows:

“§712-1201 Promoting prostitution; definition of terms. In sections 712-1202^[5] and 712-1203 ~~[and 712-1204]~~:

- (1) A person “advances prostitution” if, acting other than as a prostitute or a patron of a prostitute, ~~[he] the person~~ knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons for prostitution purposes, permits premises to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.
- (2) A person “profits from prostitution” if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, ~~[he] the person~~ accepts or receives money or other property pursuant to an agreement or understanding with any person whereby ~~[he] the person~~ participates or is to participate in the proceeds of prostitution activity.”

SECTION 3. Section 712-1202, Hawaii Revised Statutes, is amended to read as follows:

“§712-1202 Promoting prostitution in the first degree. (1) A person commits the offense of promoting prostitution in the first degree if the person knowingly:

- (a) Advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution, or profits from such ~~[eereive]~~ conduct by another; or
 - (b) Advances or profits from prostitution of a person less than eighteen years old.
- (2) Promoting prostitution in the first degree is a class ~~[B] A~~ felony.
- (3) As used in this section~~[-“threat”]~~:

“Fraud” means making material false statements, misstatements, or omissions.

“Threat” means any of the actions listed in section 707-764(1).”

SECTION 4. Section 712-1203, Hawaii Revised Statutes, is amended to read as follows:

“§712-1203 Promoting prostitution in the second degree. (1) A person commits the offense of promoting prostitution in the second degree if the person knowingly advances or profits from prostitution ~~[by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostituted persons].~~

- (2) Promoting prostitution in the second degree is a class ~~[C] B~~ felony.”

SECTION 5. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“§853-4 Chapter not applicable; when. This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
 - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
 - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of or by a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering;
 - (M) Promoting prostitution in the first degree;
 - (N) Promoting prostitution in the second degree;
 - ~~(O) Promoting prostitution in the third degree;~~
 - ~~(P)~~ (O) Abuse of family or household members;

- ~~[(Q)]~~ (P) Sexual assault in the second degree;
~~[(R)]~~ (Q) Sexual assault in the third degree;
~~[(S)]~~ (R) A violation of an order issued pursuant to chapter 586;
~~[(T)]~~ (S) Promoting child abuse in the second degree;
~~[(U)]~~ (T) Promoting child abuse in the third degree;
~~[(V)]~~ (U) Electronic enticement of a child in the first degree; or
~~[(W)]~~ (V) Electronic enticement of a child in the second degree;
- (14) The defendant has been charged with:
- (A) Knowingly or intentionally falsifying any report required under chapter 11, part XIII with the intent to circumvent the law or deceive the campaign spending commission; or
- (B) Violating section 11-352 or 11-353; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle. The court may adopt by rule other criteria in this area."

SECTION 6. Section 712-1204, Hawaii Revised Statutes, is repealed.

PART III

SECTION 7. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- "(1) A person commits the offense of prostitution if the person ~~engages~~ [engages]:
- (a) Engages in, or agrees or offers to engage in, sexual conduct with another person for a fee~~[-]; or~~
- (b) Pays, agrees to pay, or offers to pay a fee to another to engage in sexual conduct."

SECTION 8. Section 712-1207, Hawaii Revised Statutes, is amended by amending subsections (1) and (2) to read as follows:

- "(1) It shall be unlawful for any person within the boundaries of Waikiki and while on any public property~~[-; to offer]~~ to:
- (a) Offer or agree to engage in sexual conduct with another person in return for a fee~~[-]; or~~
- (b) Pay, agree to pay, or offer to pay a fee to another person to engage in sexual conduct.
- (2) It shall be unlawful for any person within the boundaries of other areas in this State designated by county ordinance pursuant to subsection (3), and while on any public property~~[-; to offer]~~ to:
- (a) Offer or agree to engage in sexual conduct with another person in return for a fee~~[-]; or~~
- (b) Pay, agree to pay, or offer to pay a fee to another person to engage in sexual conduct."

SECTION 9. Act 192, Session Laws of Hawaii 2008, is amended by amending section 1 to read as follows:

"SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- Habitual solicitation of prostitution. (1) A person commits the offense of habitual solicitation of prostitution if the person is a habitual prosti-

tution offender and pays, agrees to pay, or offers to pay a fee to another person to engage in sexual conduct.

(2) For the purposes of this section, a person has the status of a “habitual prostitution offender” if the person, at the time of the conduct for which the person is charged, had two or more convictions within ten years of the instant offense for:

- (a) Prostitution, in violation of section [712-1200;] 712-1200(1)(b);
- (b) Street solicitation of prostitution, in violation of section [712-1207;] 712-1207(1)(b);
- (c) Habitual solicitation of prostitution, in violation of this section;
- (d) An offense of any other jurisdiction that is comparable to one of the offenses in [paragraphs] paragraph (a), (b), or (c); or
- (e) Any combination of the offenses in [paragraphs] paragraph (a), (b), (c), or (d).

A conviction for purposes of this section is a judgment on the verdict or a finding of guilt, or a plea of guilty or nolo contendere. The convictions must have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the conviction must not have been expunged by pardon, reversed, or set aside.

(3) Habitual solicitation of prostitution is a [~~misdemeanor~~] class C felony.””

SECTION 10. Act 192, Session Laws of Hawaii 2008, section 3, as amended by Act 95, Session Laws of Hawaii 2010, section 1, is amended to read as follows:

“SECTION 3. This Act shall take effect upon its approval[~~, and shall be repealed on June 30, 2012~~].”

PART IV

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Hawaii Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . LABOR TRAFFICKING

§707-A Definitions. As used in this part:

“Deadly force” has the same meaning as in section 703-300.

“Force” has the same meaning as in section 703-300.

“Labor” means work of economic or financial value. Prostitution-related and obscenity-related activities as set forth in chapter 712 are not forms of “labor” under this part.

“Services” means a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor or a third party. Prostitution-related and obscenity-related activities as set forth in chapter 712 are not forms of “services” under this part.

“Unlawful force” has the same meaning as in section 703-300.

“Venture” means a business relationship between two or more parties to undertake economic activity together.

“Victim” means the person against whom an offense specified in section 707-B or 707-C has been committed.

§707-B Labor trafficking in the first degree. (1) A person commits the offense of labor trafficking in the first degree if the person intentionally or knowingly provides or obtains, or attempts to provide or obtain, another person for labor or services by any of the following means committed against the other person:

- (a) Any of the acts constituting extortion as described in section 707-764, except that for purposes of this paragraph “labor” and “services” shall be as defined in section 707-A;
- (b) The acts constituting kidnapping as described in section 707-720(1) (a) through (g), except that for purposes of this paragraph “labor” and “services” shall be as defined in section 707-A;
- (c) The acts described in section 707-721(1) or 707-722, relating to unlawful imprisonment;
- (d) The acts described in section 707-730, 707-731, or 707-732, relating to sexual assault in the first, second, or third degree;
- (e) Force, deadly force, or unlawful force;
- (f) The acts described in the definition of deception pursuant to section 708-800, or fraud, which means making material false statements, misstatements, or omissions to induce or maintain the person to engage or continue to engage in the labor or services;
- (g) Requiring that labor or services be performed to retire, repay, or service a real or purported debt, if performing the labor or services is the exclusive method allowed to retire, repay, or service the debt and the indebted person is required to repay the debt with direct labor in place of currency; provided that this shall not include labor or services performed by a child for the child’s parent or guardian;
- (h) The acts described in either section 707-710, 707-711, or 707-712, relating to assault;
- (i) Withholding any of the person’s government-issued identification documents with the intent to impede the movement of the person;
- (j) Using any scheme, plan, or pattern intended to cause the person to believe that if the person did not perform the labor or services, then the person or a friend or a member of the person’s family would suffer serious harm, serious financial loss, or physical restraint; or
- (k) Using or threatening to use any form of domination, restraint, or control over the person which, given the totality of the circumstanc-

es, would have the reasonably foreseeable effect of causing the person to engage in or to remain engaged in the labor or services.

- (2) Labor trafficking in the first degree is a class A felony.

§707-C Labor trafficking in the second degree. (1) A person commits the offense of labor trafficking in the second degree if the person knowingly:

- (a) Acts as an individual or uses a licensed business or business enterprise to aid another in a venture knowing that the other person in that venture is committing the offense of labor trafficking in the first degree; or
- (b) Benefits, financially or by receiving something of value, from participation in a venture knowing or in reckless disregard of the fact that another person has engaged in any act described in paragraph (a) in the course of that venture or that another person in that venture is committing the offense of labor trafficking in the first degree.

(2) Labor trafficking in the second degree is a class B felony; provided that if a violation of subsection (1) involves kidnapping or an attempt to kidnap, sexual assault in the first, second, or third degree, or the attempt to commit sexual assault in the first, second, or third degree, or an attempt to cause the death of a person, or if a death results, the offense shall be a class A felony.

(3) Upon conviction of a defendant for an offense under subsection (1), the court shall also order that any and all business licenses issued by the State be revoked for the business or enterprise that the defendant used to aid in the offense of labor trafficking in the second degree; provided that the court, in its discretion, may reinstate a business license upon petition to the court by any remaining owner or partner of the business or enterprise who was not convicted of an offense under this section or section 707-B.

§707-D Additional sentencing considerations; victims held in servitude. In addition to the factors set forth in sections 706-606 and 706-621, when determining the particular sentence to be imposed on a defendant convicted under section 707-B or 707-C, the court shall consider:

- (a) The time for which the victim was held in servitude; and
- (b) The number of victims involved in the offense for which the defendant is convicted.

§707-E Extended terms of imprisonment; labor trafficking offenses. If a person is found guilty of a violation under section 707-B or 707-C and the victim of the offense suffered bodily injury, the person may be sentenced to an extended indeterminate term of imprisonment as described in this section. Subject to the procedures set forth in section 706-664, the court may impose, in addition to the indeterminate term of imprisonment provided for the grade of offense, an additional indeterminate term of imprisonment as follows:

- (a) Bodily injury – an additional two years of imprisonment;
- (b) Substantial bodily injury – an additional five years of imprisonment;
- (c) Serious bodily injury – an additional fifteen years of imprisonment; or
- (d) If death results, the defendant shall be sentenced in accordance with the homicide statute relevant for the level of criminal intent.

When ordering an extended term sentence, the court shall impose the maximum length of imprisonment. The minimum length of imprisonment for an extended term sentence under paragraph (a), (b), (c), or (d) shall be determined by the Hawaii paroling authority in accordance with section 706-669.

§707-F Restitution for victims of labor trafficking. (1) In addition to any other penalty, and notwithstanding a victim's failure to request restitution under section 706-646(2), the court shall order restitution to be paid to the victim, consisting of an amount that is the greater of:

- (a) The total gross income or value to the defendant of the victim's labor or services; or
 - (b) The value of the victim's labor or services, as guaranteed under the minimum wage provisions of chapter 387 or the Fair Labor Standards Act of 1938, Public Law 75-718, Title 29 United States Code Sections 201 through 219, inclusive, whichever is greater.
- (2) The return of the victim to the victim's home country or other absence of the victim from the jurisdiction shall not relieve the defendant of the defendant's restitution obligation.

§707-G Nonpayment of wages. (1) A person commits the offense of nonpayment of wages if the person, in the capacity as an employer of an employee, intentionally or knowingly or with intent to defraud fails or refuses to pay wages to the employee, except where required by federal or state statute or by court process. In addition to any other penalty, a person convicted of nonpayment of wages shall be fined not less than \$2,000 nor more than \$10,000 for each offense.

- (2) Nonpayment of wages is:
 - (a) A class C felony, if the amount owed to the employee is equal to or greater than \$2,000 or if the defendant convicted of nonpayment of wages falsely denies the amount or validity of the wages owed; or
 - (b) A misdemeanor, if the amount owed to the employee is less than \$2,000.
- (3) A person commits a separate offense under this section for each pay period during which the employee earned wages that the person failed or refused to pay the employee. If no set pay periods were agreed upon between the person and the employee at the time the employee commenced the work, then each "pay period" shall be deemed to be bi-weekly.
- (4) In addition to any other penalty, the court shall order restitution to be paid to the employee, consisting of an amount that is the greater of:
 - (a) The wages earned by the employee that were unpaid by the person convicted of nonpayment of wages; or
 - (b) The value of the employee's labor or services, as guaranteed under the minimum wage provisions of chapter 387 or the Fair Labor Standards Act of 1938, Public Law 75-718, Title 29 United States Code Sections 201 through 219, inclusive, whichever is greater.
- (5) An employee who is the victim of nonpayment of wages may bring a civil action to recover all wages owed by the defendant convicted of nonpayment of wages.

(6) For purposes of this section:

"Employee" means any person working for another for hire, including an individual employed in domestic service or at a family's or person's home, any individual employed by the individual's spouse, or by an independent contractor.

"Person" includes any individual, partnership, association, joint-stock company, trust, corporation, the personal representative of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any persons, but shall not include the United States.

"Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

§707-H Unlawful conduct with respect to documents. (1) A person commits unlawful conduct with respect to documents if the person knowingly:

- (a) Destroys, conceals, removes, confiscates, or possesses any actual or purported government identification document of another person:
 - (i) In the course of a violation or attempt to commit an offense under section 707-B or 707-C; or
 - (ii) To prevent or restrict, or in an attempt to prevent or restrict, without lawful authority, the ability of the other person to move or travel in order to maintain the labor or services of the other person, when the person is or has been the victim of an offense under section 707-B or 707-C; or
- (b) Destroys, conceals, removes, or confiscates any actual or purported government identification document of an employee.
- (2) Unlawful conduct with respect to documents is a class C felony.”

SECTION 2. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses ~~[which]~~ that specifically authorize forfeiture;
- (b) Murder, kidnapping, ~~labor trafficking~~, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, ~~[unlawful]~~ methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, or electronic enticement of a child ~~[which]~~ that is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.”

SECTION 3. Section 803-44, Hawaii Revised Statutes, is amended to read as follows:

“§803-44 Application for court order to intercept wire, oral, or electronic communications. The attorney general of this State, or a designated deputy attorney general in the attorney general’s absence or incapacity, or the prosecuting attorney of each county, or a designated deputy prosecuting attorney in the prosecuting attorney’s absence or incapacity, may make application to a designated judge or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, in the county where the interception is to take place, for an order authorizing or approving the interception of wire, oral, or electronic communications, and such court may grant in conformity with section 803-46 an order authorizing[;] or approving the interception of wire, oral,

or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, if the interception might provide or has provided evidence of:

- (1) Murder;
- (2) Kidnapping;
- (3) Labor trafficking in the first degree;
- (4) Labor trafficking in the second degree;
- [(3)] (5) Felony criminal property damage involving the danger of bodily injury as defined in section 707-700;
- [(4)] (6) Distribution of dangerous, harmful, or detrimental drugs; or
- [(5)] (7) Conspiracy to commit one or more of the above; or [involving
- (6) Organized] (8) Involvement of organized crime and any of the following felony offenses:
 - (A) Extortion;
 - (B) Bribery of a juror, [of a] witness, or [of a] police officer;
 - (C) Receiving stolen property; [and]
 - (D) Gambling; and
 - (E) Money laundering.”

SECTION 4. Section 842-1, Hawaii Revised Statutes, is amended by amending the definitions of “organized crime” and “racketeering activity” to read as follows:

““Organized crime” means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, aid, or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, labor trafficking, or corruption of law enforcement officers or other public officers or employers.

“Racketeering activity” means any act or threat involving[;] but not limited to murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, labor trafficking, theft, or prostitution, or any dealing in narcotic or other dangerous drugs [which] that is chargeable as a crime under state law and punishable by imprisonment for more than one year.”

SECTION 5. The department of the attorney general shall submit a report regarding the implementation of this Act, including findings, recommendations, and any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2014.

SECTION 6. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

ACT 147

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)

ACT 147

H.B. NO. 1079

A Bill for an Act Relating to Fees for Habitat Conservation Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii hosts the greatest concentration of threatened and endangered species in the country. Increased development throughout the State, while beneficial to the State in many regards, has the potential to adversely affect threatened and endangered species. The legislature has provided a means to permit desirable activities that may cause incidental take of threatened and endangered species through the establishment of incidental take licenses and habitat conservation plans pursuant to chapter 195D, Hawaii Revised Statutes.

Incidental take licenses authorize take of threatened and endangered species in cases where take is incidental to an otherwise lawful activity; provided that the applicant obtains approval of a habitat conservation plan that identifies and implements measures to avoid, minimize, mitigate, and monitor take of those species, and that will increase the likelihood of recovery of the endangered or threatened species that are the focus of the plan.

The department of land and natural resources is responsible for evaluating, processing, and approving habitat conservation plans and incidental take licenses to ensure compliance with requirements under chapter 195D, Hawaii Revised Statutes. Chapter 195D, Hawaii Revised Statutes, provides that the department may establish a technical assistance program to assist landowners with habitat conservation plans. The department has established such a program, and the technical assistance that is required is specialized in nature and labor intensive, requiring consultation with expert staff, endangered species biologists, and land managers.

The number of applications for incidental take licenses and requests for technical assistance related to habitat conservation plans have increased significantly in recent years. The demand for the technical assistance program cannot be met under the department's current budget.

The purpose of this Act is to authorize the department of land and natural resources to collect fees and payment for costs incurred by the technical assistance program associated with assisting landowners in the development, review, and monitoring of habitat conservation plans, and adopt rules for establishing such fees.

SECTION 2. Section 195D-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Technical assistance program” means a program that includes department staff designated to assist landowners in developing, reviewing, or monitoring habitat conservation plans by providing technical assistance.”

SECTION 3. Section 195D-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The department may establish a habitat conservation technical assistance program to assist landowners in developing, reviewing, or monitoring habitat conservation plans by providing technical assistance. The department may collect fees and payment for costs incurred for use of the technical assistance program in the development, review, or monitoring of a specific habitat conservation plan. Fees shall be charged at an hourly rate of \$50. The fees and payment for costs collected pursuant to this subsection shall be deposited into the endangered species trust fund established under section 195D-31.”

SECTION 4. Section 195D-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the state treasury a trust fund to be known as the endangered species trust fund to be administered by the department to implement the purposes of this chapter.

The fund shall consist of moneys from the following sources:

- (1) Moneys accrued from the sale of retail items officially sponsored by the department for the fund;
- (2) Private contributions for the management and recovery of Hawaii’s unique plants and animals;
- (3) Fees and assessments charged for the commercial use of public land and waters and designated for the fund;
- (4) Penalties, fines, or auctions resulting from enforcement violations;
- (5) Legislative appropriations; and
- (6) Moneys deposited to implement the obligations of a habitat conservation plan [ø], as security for habitat conservation plan funding[-], or technical assistance program fees and payment for costs incurred for use of the technical assistance program as set forth in section 195D-23(d).”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 21, 2011.)

ACT 148

S.B. NO. 1485

A Bill for an Act Relating to Reconstituting Schools.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Public schools that have been in restructuring for four or more years and have not made significant advancements toward improving academic performance, should be reconstituted using extraordinary measures. Drastic steps must be taken to ensure that our students make adequate academic progress.

The purpose of this Act is to allow the superintendent of education to:

- (1) Reconstitute a public school, except for a charter school, after certain considerations have been made, that has been in restructuring for four or more school years and has not made significant advancements toward improving academic performance; and
- (2) Recommend to the charter school review panel actions that should be taken to reconstitute a charter school that has been in restructur-

ing for four or more school years or recommend that the charter school's charter be revoked.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Reconstituting schools. (a) Notwithstanding collective bargaining agreements, memorandums of agreement, or memorandums of understanding, the superintendent may reconstitute a public school, except a charter school, that has been in restructuring under the No Child Left Behind Act of 2001, Public Law 107-110, for four or more school years and has not made significant advancements toward improving academic performance as determined by a statistical analysis of academic data; provided that the following have been considered:

- (1) Student proficiency in reading and math in the period during which the school is in restructuring;
- (2) Interventions and other programs being used by the school to address student proficiency;
- (3) The number of highly qualified or effective teachers at the school;
- (4) Professional development being conducted at the school;
- (5) Input from school faculty and staff, complex specialists, and state office program specialists; and
- (6) Input from the school community council;

provided further that the superintendent has made a recommendation to the board to reconstitute the school, taking into consideration the recommendation of the complex area superintendent, if any.

(b) In reconstituting a public school, the superintendent may take actions that include:

- (1) Replacing all or most of the staff, including teachers, principals, and other support staff;
- (2) Entering into a contract with a private entity to manage the school; and
- (3) Changing the membership of the school community council.

(c) The department shall negotiate with the respective unions the process of reassigning employees of the school to be reconstituted to other positions within the department for which the employees are qualified.

(d) The department shall follow the current hiring and recruiting procedures for all employees to be employed at the reconstituted school.

(e) The board shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.”

SECTION 3. Chapter 302B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302B- Reconstituting public charter schools. (a) The superintendent may recommend actions to the charter school review panel that should be taken to reconstitute a charter school that has been in restructuring under the No Child Left Behind Act of 2001, Public Law 107-110, for four or more school years, and may recommend that the charter school review panel revoke the charter school's charter.

(b) The board shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.”

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 21, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 149

S.B. NO. 1069

A Bill for an Act Relating to Cruelty to Animals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§711- Cruelty to animals by fighting dogs in the second degree. (1) A person commits the offense of cruelty to animals by fighting dogs in the second degree if the person knowingly:

- (a) Wagers on a dogfight;
- (b) Attends or pays to attend a dogfight; or
- (c) Possesses any device intended to enhance the dog’s fighting ability with the intent that the device be used to train or prepare the dog for a dogfight.

(2) As used in this section:

“Bait dog” means a live animal used to train or prepare dogs for a dogfight.

“Device” means both animate and inanimate objects and includes live animals used as bait dogs.

“Dogfight” means a dog or dogs pitted against another dog or dogs with the intent that the encounter will result in injury to one or more of the dogs.

“Wager” means staking or risking something of value on the outcome of a dogfight.

(3) Cruelty to animals by fighting dogs in the second degree is a class C felony.”

SECTION 2. Section 711-1109.1, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) If there is probable cause to believe that a pet animal is being subjected to treatment in violation of section 711-1108.5, 711-1109, 711-1109.3, [or] 711-1109.6, or 711-____, a law enforcement officer, after obtaining a search warrant or in any other manner authorized by law, may enter the premises where the pet animal is located to provide the pet animal with food, water, and emergency medical treatment or to impound the pet animal. If after reasonable effort, the owner or person having custody of the pet animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal was removed.”

SECTION 3. Section 711-1109.2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) If any pet animal is impounded pursuant to section 711-1109.1, prior to final disposition of the criminal charge under section 711-1108.5, 711-1109, 711-1109.3, [ØF] 711-1109.6, or 711-____, against the pet animal’s owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal may file a petition in the criminal action requesting that the court issue an order for forfeiture of the pet animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.”

2. By amending subsection (3) to read:

“(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal was subjected to a violation of section 711-1108.5, 711-1109, 711-1109.3, [ØF] 711-1109.6[-], or 711-____. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal to the petitioner, unless the defendant, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the defendant post a security deposit or bond.”

3. By amending subsection (5) to read:

“(5) No pet animal may be destroyed by a petitioner under this section prior to final disposition of the criminal charge under section 711-1108.5, 711-1109, 711-1109.3, [ØF] 711-1109.6, or 711-____, against the pet animal’s owner, except in the event that the pet animal is so severely injured that there is no reasonable probability that its life can be saved.”

SECTION 4. Section 711-1109.3, Hawaii Revised Statutes, is amended to read as follows:

“§711-1109.3 Cruelty to animals[;] by fighting dogs[-] in the first degree.

(1) A person commits the offense of cruelty to animals by fighting dogs in the first degree if the person:

- ~~(a) Owns or trains any dog with the intent that such dog shall be engaged in an exhibition of fighting with another dog;~~
- ~~(b) For amusement or gain, intentionally causes any dog to fight with another dog, or causes any dog to injure another dog; or~~
- ~~(c) Knowingly or recklessly permits any act in violation of paragraph (a) or (b) to be done on the premises under the person’s charge or control, or aids or abets any such act.]~~
- (a) Knowingly:
 - (i) Causes, sponsors, arranges, or holds a dogfight for entertainment or financial gain; or
 - (ii) Owns, trains, transports, possesses, sells, transfers, or equips any dog with the intent that the dog shall be engaged in a dogfight; or
- (b) Recklessly:

- (i) Allows a dogfight to occur on any property owned or controlled by the person; or
 - (ii) Allows any dog intended to be used for a dogfight to be kept, trained on, or transported in, any property owned or controlled by the person.
- (2) Nothing in this section shall prohibit any of the following:
- (a) The use of dogs in the management of livestock by the owner of the livestock or the owner's employees or agents or other persons in lawful custody thereof;
 - (b) The use of dogs in hunting wildlife including game; or
 - (c) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.
- (3) As used in this section, "dogfight" means a dog or dogs pitted against another dog or dogs with the intent that the encounter will result in injury to one or more of the dogs.
- ~~[(3)]~~ (4) Violation of this section shall be a class [C] B felony.
- ~~[(4)]~~ (5) If there is any conflict between this section and section 711-1109, or any other provision of law, this section shall apply."

SECTION 5. Section 711-1110.5, Hawaii Revised Statutes, is amended to read as follows:

"§711-1110.5 Surrender or forfeiture of animals. Upon conviction, guilty plea, or plea of nolo contendere for any violation of section 711-1108.5, 711-1109, 711-1109.3, ~~[ø]~~ 711-1109.6~~[;]~~, or 711-_____ :

- (1) The court may order the defendant to surrender or forfeit the animal whose treatment was the basis of the conviction or plea to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order; and
- (2) The court also may order the defendant to surrender or forfeit any other animals under the possession, custody, or control of the defendant to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order, if there is substantial evidence that the animals are being abused or neglected.

The court shall order the defendant to reimburse the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for reasonable costs incurred to care, feed, and house any animal that is surrendered or forfeited pursuant to this section."

SECTION 6. Act 128, Session Laws of Hawaii 2008, as amended by Act 160, Session Laws of Hawaii 2009, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, 2015~~[-]~~; provided that sections 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act."

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

ACT 150

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2011; provided that the amendments made to section 711-1109.1, Hawaii Revised Statutes, in section 2 of this Act, to section 711-1109.2, Hawaii Revised Statutes, in section 3 of this Act, and to section 711-1110.5, Hawaii Revised Statutes, in section 5 of this Act, shall not be repealed when those sections are reenacted on July 1, 2015, by section 6 of this Act.

(Approved June 21, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 150

S.B. NO. 1383

A Bill for an Act Relating to School Repair and Maintenance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the backlog of repair and maintenance projects in public schools continues to be of concern and that all means of addressing the problem should be explored and supported.

The legislature further finds that Hawaii 3R's has saved the State money by completing repair and maintenance projects at public schools - repairs that ordinarily would be done with only state funds and resources. Hawaii 3R's generates savings for the State by leveraging state grant funds with federal funds, private donations, and volunteerism or "sweat equity" from various community organizations and businesses.

Since its inception in 2001, Hawaii 3R's has saved the State an estimated \$36,700,000. This figure is determined by taking the State's official estimated cost of the repair and maintenance projects completed through Hawaii 3R's projects (\$39,600,000) and subtracting the amount of state grant funds expended to support Hawaii 3R's (\$2,900,000). This means that for every \$1 invested in Hawaii 3R's by the State, over \$12 worth of work is completed. It is also noteworthy that Hawaii 3R's has statewide reach, with five hundred three grants awarded to one hundred seventy-five different schools on the islands of Oahu, Maui, Molokai, Lanai, Kauai, and Hawaii.

The legislature acknowledges that Hawaii 3R's also has built a partnership with the Joint Venture Education Forum, a partnership between the department of education and the United States Pacific Command. This relationship benefits not only military-impacted or military-partnered schools but all of Hawaii's public schools through increased military partnerships. Through Joint Venture Education Forum (i.e., federal) funding, Hawaii 3R's can provide grants to over one hundred military-impacted, dependent, or partnered schools.

The legislature is encouraged by the level of support that the community has given to Hawaii 3R's and, more importantly, to the public schools. Skilled and unskilled volunteer labor from private businesses, the military, civic clubs,

churches, teachers, parents, and students, combined with donations from community businesses and foundations, have all contributed to the success of Hawaii 3R's. In addition, Hawaii's trade unions and associations have been lending invaluable support. Overall, over two thousand five hundred people have provided over ten thousand hours of volunteer labor.

The legislature understands that it is necessary to continue to provide state funding to support Hawaii 3R's and to fund grants that cannot be funded through Hawaii 3R's other funding sources, especially given the uncertainty of the availability of federal funds in the future. Hawaii 3R's has proven to be a worthy means to invest in the condition of public school facilities and to promote community involvement. Hawaii 3R's has proven to be an efficient organization by keeping administrative costs below ten per cent of overall expenses.

The legislature finds that Hawaii 3R's serves the public purpose and the purpose of this Act is to support the continuation of this valuable work by authorizing the Hawaii 3R's school repair and maintenance fund to receive moneys transferred to it from the school-level minor repairs and maintenance special fund.

SECTION 2. Section 302A-1502.4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The fund shall also receive moneys transferred to it from the school-level minor repairs and maintenance special fund established under section 302A-1504.5. The legislature intends that public and private sectors review and investigate all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing school-level minor repairs and maintenance programs~~[-including [school-level minor repair and maintenance account] established under section 302A-1504].~~”

SECTION 3. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any modification with reasons for the modification to the legislature at its next regular session for review.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved June 21, 2011.)

ACT 151

H.B. NO. 1342

A Bill for an Act Relating to Telecommunications.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 199, Session Laws of Hawaii 2010, established a broadband work group to develop procedures for streamlining permitting functions

applicable to the development of broadband services and broadband technology. The legislature finds that the broadband work group has recommended the creation of an exemption from various permitting requirements for the installation of new or upgraded broadband infrastructure along existing poles and conduits that are already used for telecommunications. Another discussion item of the broadband work group is the streamlining of the processing of pole, conduit, and duct applications.

The purpose of this Act is to facilitate the deployment of high-speed broadband infrastructure in Hawaii by exempting the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology from state and county permitting requirements, under certain conditions, and reducing the time and costs associated with requests for access to utility poles and conduits. This Act also makes the director of commerce and consumer affairs a member and chairperson of the broadband assistance advisory council and a member and convenor of the broadband work group established under Act 199, Session Laws of Hawaii 2010, and removes the cable television administrator from the broadband assistance advisory council and the broadband work group.

SECTION 2. From January 1, 2012, to January 1, 2017, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation, except to the extent that such permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation, improvement, construction, or development of infrastructure shall:

- (1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables:
 - (A) On existing or replacement utility poles and conduits; and
 - (B) Using existing infrastructure and facilities;
- (2) Take place within existing rights-of-way or public utility easements or use existing telecommunications infrastructure; and
- (3) Make no significant changes to the existing public rights-of-way, public utility easements, or telecommunications infrastructure.

A person or entity shall use reasonable best efforts to comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service.

A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the owner of the existing rights-of-way, utility easements, or telecommunications infrastructure.

SECTION 3. Consistent with federal law, no person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new telecommunications cables or to improve existing telecommunications cables; provided that:

- (1) The overall weight load and the diameter of the attachment on the utility pole following the installation or improvement does not exceed the overall weight load and diameter of the attachment prior to the installation or improvement; and
- (2) The utility pole is not damaged or made less safe or reliable due to the installation or improvement of telecommunications cables.

The public utilities commission may allow a public utility to recover all prudently incurred costs as approved through rates, charges, or clauses approved or established by the public utilities commission pursuant to section 269-16, Hawaii Revised Statutes, including but not limited to planning, engineering, construction, installation, or replacement of utility poles undertaken to accomplish the objectives of this Act. Recovery of all prudently incurred costs shall also apply to a broadband service provider.

If access to a utility pole is not granted within forty-five days of a written request for access, the utility must confirm the denial in writing by the forty-fifth day, consistent with the requirements established by the Federal Communications Commission under Title 47, Chapter 1, Code of Federal Regulations. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

SECTION 4. No later than January 1, 2016, the director of commerce and consumer affairs shall:

- (1) Review the state of broadband communications in Hawaii and the permitting exemptions granted pursuant to this Act; and
- (2) Make a recommendation whether to extend the exemptions provided by this Act.

The director of commerce and consumer affairs shall submit a report of the director's findings and recommendations, along with any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2016.

SECTION 5. Act 199, Session Laws of Hawaii 2010, is amended by amending section 3 to read as follows:

“SECTION 3. Telework promotion and broadband assistance advisory council; establishment; purpose. (a) ~~The [administrator of the cable television division of the department of commerce and consumer affairs]~~ director of commerce and consumer affairs shall convene and chair the broadband assistance advisory council to advise the ~~[administrator]~~ director of commerce and consumer affairs on policy and funding priorities to promote and encourage use of telework alternatives for public and private employees, and expedite deployment of affordable and accessible broadband services in Hawaii.

(b) The council shall be composed of the ~~[administrator of the cable television division]~~ director of commerce and consumer affairs, or the director's designee, and the following twelve members who shall be equally appointed by the president of the senate and by the speaker of the house of representatives as follows:

- (1) Two members of the senate, appointed by the president of the senate;
- (2) Two members of the house of representatives, appointed by the speaker of the house of representatives;
- (3) Four representatives of federal, state, and county government entities having a role in infrastructure deployment; management of public rights-of-way, regulation, and franchising; information technology; and economic development; and
- (4) Four representatives of Hawaii's private sector technology, telecommunications, and investment industries.

Except for the [~~administrator of the cable television division~~] director of commerce and consumer affairs, all members shall serve for a term of four years. Any vacancies occurring in the membership of the advisory council shall be filled for the remainder of the unexpired term in the same manner as the original appointments.

(c) The [~~administrator of the cable television division~~] director of commerce and consumer affairs shall serve as chairperson of the council. The council shall meet at times as may be called by the chairperson. Members shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties. Administrative support to the council shall be provided by the department of commerce and consumer affairs.

- (d) The council shall:
- (1) Monitor the broadband-based development efforts of other states and nations in areas such as business, education, and health;
 - (2) Advise the department on other states' best practices involving telework promotion and policies and strategies related to making affordable broadband services available to every Hawaii home and business;
 - (3) Monitor broadband-related activities at the federal level;
 - (4) Monitor regulatory and policy changes for potential impact on broadband deployment and sustainability in Hawaii; and
 - (5) Encourage public-private partnerships to increase the deployment and adoption of broadband services and applications."

SECTION 6. Act 199, Session Laws of Hawaii 2010, is amended by amending subsection (a) of section 4 to read as follows:

"(a) The [~~administrator of the cable television division of the department of commerce and consumer affairs~~] director of commerce and consumer affairs shall convene a work group to develop procedures for streamlined permitting functions that are applicable to the development of broadband services and broadband technology that are normally available to state and local governments for the use or development of broadband service or broadband technology. Members of the work group shall include:

- (1) The [~~administrator of the cable television division~~] director of commerce and consumer affairs, or the [~~administrator's~~] director's designee;
- (2) The mayor of the county of Hawaii, or the mayor's designee;
- (3) The mayor of the city and county of Honolulu, or the mayor's designee;
- (4) The mayor of the county of Kauai, or the mayor's designee;
- (5) The mayor of the county of Maui, or the mayor's designee;
- (6) The chairperson of the Hawaii broadband task force established by Act 2, First Special Session Laws of Hawaii 2007; and

- (7) Two representatives of state agencies with jurisdiction over land use and permitting at the state level.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2011.

(Approved June 21, 2011.)

ACT 152

H.B. NO. 1020

A Bill for an Act Relating to the Aloha Tower Development Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 206J-3, Hawaii Revised Statutes, is amended to read as follows:

“§206J-3 Aloha Tower complex; designated boundaries. The Aloha Tower complex is established. The complex shall include the area bounded by Nimitz Highway beginning at its intersection with the Diamond Head boundary of tax map key 2-1-13:7 north along Nimitz Highway to its intersection [with the makai boundary of tax map key 1-7-1:6; northeast along River Street to its intersection with King Street; north along King Street to its intersection with Iwilei Road west along Iwilei Road to its intersection with Nimitz Highway at the Ewa makai corner of tax map key 1-5-08:1; south along Nimitz Highway to its intersection with the boundary between tax map key 1-5-8:1 and tax map key 1-5-8:9; west along a line to the Diamond Head mauka corner of tax map key 1-5-40:4; west along Nimitz Highway to its intersection with the Ewa boundary of tax map key 1-5-38:4; south along the Ewa boundaries of tax map key 1-5-38:4 and 1-5-38:5 to Honolulu Harbor; east along the waterfront boundary of tax map key 1-5-38:5 to Pier 23; south along Pier 23 to the southwest end of Pier 22; continuing along a line in the same direction to its intersection with the Honolulu Harbor Federal Project Line; northeast along the Honolulu Harbor Federal Project Line to a point in Honolulu Harbor 475 feet perpendicular to Pier 11; southwest along a line parallel to Piers 10 and 11 to its intersection with a line extending from the southwest end of Pier 22 to the point of intersection of the Honolulu Harbor Federal Project Line and a line extending along Pier 8 into Honolulu Harbor; southeast along a line to the point of intersection of the Honolulu Federal Project Line and a line extending along Pier 8 into Honolulu Harbor; southeast along the Honolulu Harbor Federal Project Line to its intersection with a line extending along Pier 4 into Honolulu Harbor; east along a line from that intersection and along Pier 4 to its intersection with Nimitz Highway;] at Pier 11 and Nimitz Highway; southwest along the face of Piers 10 and 11; southeast along the face of Pier 9; northeast along the face of Pier 8; southeast parallel along the revetment of Ala Moana Boulevard and to include Pier 7; southwest along Pier 6 and its shoreline and around to Pier 5 and its shoreline; northeast to Ala Moana Boulevard; north along Nimitz Highway to its intersection with Richards Street; southwest along Richards Street to its intersection with Ala Moana Boulevard; northwest along Ala Moana Boulevard to its intersection with the Ewa boundary of tax map key 2-1-14:6; northeast along the Ewa boundary of tax map key 2-1-14:6 to its Ewa mauka corner; and northwest across Bishop Street to the point of beginning at the intersection of

the Diamond Head boundary of tax map key 2-1-13:7 and Nimitz Highway. [The complex shall also include the area bounded by Iwilei Road beginning with its intersection with Nimitz Highway; west along Iwilei Road to its intersection with Pacific Street; southeast along Pacific Street to its intersection with the Ewa mauka corner of tax map key 1-5-38:4; east along Nimitz Highway to its intersection with the Diamond Head mauka corner of tax map key 1-50-40:4; east along a line to the point of intersection at the boundary between tax map key 1-5-8:1 and tax map key 1-5-8:9; north along Nimitz Highway to the point of beginning at the intersection of Nimitz Highway and Iwilei Road. All fast and submerged lands contained within these areas shall also be included.]”

SECTION 2. Section 206J-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established the Aloha Tower development corporation, which shall be a public body corporate and politic, a public instrumentality, and an agency of the State. The development corporation shall be placed within the department of [~~business, economic development, and tourism~~] transportation for administrative purposes, pursuant to section 26-35.

(b) [~~Except as provided in section 206J-5.5, the~~] The development corporation shall consist of a board of directors having [~~seven~~] three voting members[-]; The director of business, economic development, and tourism, the director of transportation, [~~the chairperson of the board of land and natural resources, and the mayor of the city and county of Honolulu, or their respective designated representatives, shall serve as ex officio voting members.~~] and the deputy director of transportation, harbors division. [~~Three members from the public at large shall be appointed by the governor for staggered terms pursuant to section 26-34 and shall also serve as voting members; provided that no public member shall be an officer or employee of the State or its political subdivisions. All members shall continue in office until their respective successors have been appointed.~~] The board, by a majority vote, shall elect a chairperson from within its membership.”

SECTION 3. Section 206J-17, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) There is created the Aloha Tower fund. [All:

(1) Moneys;

(2) Rentals;

(3) Charges;

(4) ~~Other~~] All moneys, rentals, charges, other revenues of the development corporation[;], and

[~~(5) Moneys~~] moneys or charges received by the department of [~~business, economic development, and tourism;~~] transportation,

including reimbursements for costs and staff services as a result of planning, development, or redevelopment of the lands located seaward of Nimitz Highway between Pier 4 and [~~the Honolulu International Airport~~] Pier 11 shall be deposited into the fund.”

2. By amending subsection (c) to read:

“(c) The moneys on deposit in the fund shall be used for the purposes of this chapter, lease payments to the department of transportation, and for the development, redevelopment, or improvement of the Honolulu Waterfront located seaward of Nimitz Highway between Pier 4 and [~~the Honolulu International Airport~~] Pier 11.”

SECTION 4. Section 206J-5.5, Hawaii Revised Statutes, is repealed.

SECTION 5. All fund balances remaining unencumbered and unexpended as of June 30, 2011, in the Aloha Tower Fund shall lapse to the credit of the harbor special fund and shall be used for operating expenses for the Aloha Tower development corporation.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 153

H.B. NO. 117

A Bill for an Act Relating to Special Management Areas.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the cost of purchasing and importing construction materials, along with the cost of labor, has risen at a rate that has increased the overall cost of projects that, in the past, may have been viewed as insubstantial or minor. Furthermore, the increase in the number of these minor projects and the shortage of personnel that the various county planning departments are experiencing, have significantly slowed the review and processing of minor projects within the special management areas of the counties.

The purpose of this Act is to expedite and facilitate work on projects that have been or may be stalled due to delays relating to special management area permitting requirements.

SECTION 2. Section 171-6, Hawaii Revised Statutes, is amended to read as follows:

“§171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

- (1) Adopt a seal;
- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license,

- or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use;
 - (8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
 - (9) ~~Utilize~~ Use arbitration under chapter 658A to settle any controversy arising out of any existing or future lease;
 - (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;
 - (11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
 - (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:
 - (A) Be fined not more than \$1,000 a day for the first offense;
 - (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
 - (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
 - (D) Assume such costs as may result from adverse effects from such restoration; and
 - (E) Be liable for administrative costs incurred by the department and for payment of damages;
 - (13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;
 - (14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (13);
 - (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined not more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation~~];~~ provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
- (B) Fined not more than \$10,000 per violation for a second violation within five years of the last violation~~];~~ provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
- (C) Fined not more than \$20,000 per violation for a third or subsequent violation within five years of the last violation~~];~~ provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii ~~[state constitution];~~ State Constitution;

- (16) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the department and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance;
- (17) Pledge or assign all or any part of the receipts and revenues of the department. The revenue bonds shall be payable from and secured solely by the revenue derived by the department from the industrial park or parks for which the bonds are issued;
- (18) Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of this chapter; ~~and~~
- (19) Notwithstanding part II of chapter 205A to the contrary, plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the division of boating and ocean recreation of the department without the need to obtain a special management area minor permit or special management area use permit; and
- ~~(19)~~ (20) Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter.”

SECTION 3. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definitions of “development”, “special management area minor permit”, and “special management area use permit” to read as follows:

“Development” means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

- (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (2) Grading, removing, dredging, mining, or extraction of any materials;
- (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (5) Construction, reconstruction, demolition, or alteration of the size of any structure.

“Development” does not include the following:

- (1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;
- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (5) Zoning variances, except for height, density, parking, and shoreline setback;
- (6) Repair, maintenance, or interior alterations to existing structures;
- (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (9) Transfer of title to land;
- (10) Creation or termination of easements, covenants, or other rights in structures or land;
- (11) Final subdivision approval;
- ~~(11)~~ (12) Subdivision of land into lots greater than twenty acres in size;
- ~~(12)~~ (13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
- ~~(13)~~ (14) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
- ~~(14)~~ (15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
- ~~(15)~~ (16) Nonstructural improvements to existing commercial structures; and

~~[(16)]~~ (17) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens; provided that whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.

“Special management area minor permit” means an action by the authority authorizing development the valuation of which is not in excess of ~~[\$125,000]~~ \$500,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

“Special management area use permit” means an action by the authority authorizing development the valuation of which exceeds ~~[\$125,000]~~ \$500,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 154

S.B. NO. 142

A Bill for an Act Relating to Dams and Reservoirs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 179D-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall administer the dam and reservoir safety program established by this chapter. In carrying out this chapter, the board shall cooperate, advise, consult, contract, and enter into cooperative agreements with the United States government or any of its agencies, other state agencies, and the county governments or any of their agencies. In the performance of its duties, the board shall:

- (1) Establish by rules adopted under chapter 91, policies, requirements, or standards governing the design, construction, operation, maintenance, enlargement, alteration, repair, removal, and inspection of dams, reservoirs, and appurtenant works for the protection of life and property from structural failure of dams and reservoirs;
- (2) Conduct investigations and ~~[the collection of]~~ collect data, including technological advances made in dam and reservoir safety practices elsewhere, as may be needed for the proper review and study of the various features of the design, construction, repair, removal, inspection, operation, maintenance, alteration, and enlargement of dams, reservoirs, and appurtenant works. The board may require submission of reports of investigations from all owners;
- (3) Conduct investigations and require reports from all owners to be made from time to time, including watershed investigations and

- studies, as may be necessary to keep abreast of developments affecting stream runoff and as required to facilitate its decisions;
- (4) Be authorized to enter upon such private property of the dam or reservoir as may be necessary in making, at the owner's expense, any investigation or inspection required or authorized by this chapter. The entry shall not constitute a cause of action in favor of the owner of the land, except for damages resulting from wilful acts or negligence by the board or its agents;
 - (5) Require the owners to apply for, and obtain from the board written approval of plans and specifications on the construction of any new dam or reservoir or the enlargement of any dam or reservoir prior to commencement of any work;
 - (6) Require the owners to file an application and secure the written approval of the board before commencing the repair, alteration, or removal of a dam or reservoir, including the alteration or removal of a dam or reservoir so that it no longer constitutes a dam or reservoir as defined in this chapter. Repairs shall not be deemed to apply to routine maintenance not affecting the safety of the structure;
 - (7) Require owners to secure the written approval of the board to impound water;
 - (8) Require fees to cover a portion of the board's costs in carrying out the administration of dam and reservoir safety;
 - (9) Cooperate with all public and private agencies created for the purpose of enhancing dam and reservoir safety activities and training, assist these organizations and agencies in coordinating the use of their facilities, and participate in the exchange of ideas, knowledge, and data with these organizations and agencies;
 - (10) Consider dams and reservoirs as important water resources for the State that provide significant benefits to the general public, including irrigation for agriculture and other important uses, and acknowledge the need for dams and reservoirs to be consistently maintained and operated in a safe and feasible manner that sustains their roles as important water resources; provided that public safety concerns are addressed;
 - ~~[(10)]~~ (11) Prepare, publish, and issue printed pamphlets, bulletins, or advisories, or conduct training as the board deems necessary for the dissemination of information to the public;
 - ~~[(11)]~~ (12) Appoint and remove agents and employees, including hearing officers, specialists, and consultants, as necessary to carry out the purposes of this chapter, who may be engaged by the board without regard to the requirements of chapter 76;
 - ~~[(12)]~~ (13) Catalog and maintain an inventory of all regulated dams and reservoirs in the State pursuant to this chapter without regard to chapter 91;
 - ~~[(13)]~~ (14) Establish similar or consistent hazard potential classifications in conjunction with other applicable state or federal guidelines for all regulated dams and reservoirs in the State pursuant to this chapter without regard to chapter 91;
 - ~~[(14)]~~ (15) Examine and approve or disapprove applications for approval of the construction, enlargement, repair, alteration, or removal of a dam or reservoir and applications for certificates of approval to impound;
 - ~~[(15)]~~ (16) Order the suspension, revocation, or both, of any application approval or certificate of approval to impound for any act or failure

- to comply with this chapter or with any rules or orders adopted pursuant to this chapter, or with any of the conditions contained in or attached to the application approval or certificate of approval to impound;
- ~~[(16)]~~ (17) Issue orders requiring the adoption by an owner of remedial measures necessary for the safety of life or public or private property, or for carrying out this chapter or rules issued under this chapter;
- ~~[(17)]~~ (18) Order the immediate cessation of any act that is started or continued without an application approval or certificate of approval to impound as required by this chapter;
- ~~[(18)]~~ (19) Enter private property and immediately take actions necessary to provide protection to life or property at the owner's expense, including removal of the dam or reservoir. The entry shall not constitute a cause of action in favor of the owner of the land, except for damages resulting from wilful acts or gross negligence by the board or its agents;
- ~~[(19)]~~ (20) Recover from the owner, in the name of the State, the expenses incurred in taking any action required by the owner of the dam or reservoir in the same manner that debts are recoverable by law;
- ~~[(20)]~~ (21) Assess civil penalties for violation of this chapter or any rule or standard adopted or order issued by the board pursuant to this chapter;
- ~~[(21)]~~ (22) Place liens, as needed, on the owner's property, to be collected as delinquent taxes against the lands and property, if the owner neglects to pay any costs, expenses, or penalties chargeable to the owner under this chapter or any rule, order, or condition adopted, issued, or required under this chapter;
- ~~[(22)]~~ (23) With the assistance of the attorney general, institute and prosecute all court actions that may be necessary to obtain the enforcement of any order issued by the board in carrying out this chapter; and
- ~~[(23)]~~ (24) Take any and all other actions as may be necessary to carry out this chapter."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 23, 2011.)

ACT 155

S.B. NO. 14

A Bill for an Act Relating to Agricultural Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 141-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Subject to legislative appropriation, moneys in the special fund may be expended for the following purposes:

- (1) The awarding of grants to farmers for agricultural production or processing activity;

- (2) The acquisition of real property for agricultural production or processing activity;
- (3) The improvement of real property, dams, reservoirs, irrigation systems, and transportation networks necessary to promote agricultural production or processing activity[;], including investigative studies to identify and assess necessary improvements to dams, reservoirs, irrigation systems, and transportation networks;
- (4) The purchase of equipment necessary for agricultural production or processing activity;
- (5) The conduct of research on and testing of agricultural products and markets;
- (6) The funding of agricultural inspector positions within the department of agriculture;
- (7) The promotion and marketing of agricultural products grown or raised in the State; ~~[and]~~
- (8) Water quality testing and improvement; and
- ~~(8)~~ (9) Any other activity intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the State.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 156

H.B. NO. 555

A Bill for an Act Relating to Graffiti.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 708-823.6, Hawaii Revised Statutes, is amended to read as follows:

~~“[§708-823.6] Graffiti; sentencing.~~ (1) Whenever a person is sentenced under section 708-821, 708-822, 708-823, or 708-823.5[;] for an offense in which the damage is caused by graffiti, in addition to any penalty prescribed by those sections, the person shall be required to:

- (a) Remove the graffiti from the damaged property within thirty days of sentencing, if it has not already been removed and where consent from the respective property owner or owners has been obtained; and
- (b) For a period of time not to exceed two years from the date of sentencing, along with any other person or persons who may be sentenced under this section for the same property, perform community service removing, within fourteen days, any graffiti applied to other property within ~~[one]~~ two hundred fifty yards of the site of the offense for which the person was sentenced, where consent from the respective property owner or owners has been obtained, even if the property was damaged by another person[-];

provided that removal of graffiti shall not place the person or others in physical danger nor inconvenience the public.

(2) In lieu of performing graffiti removal pursuant to subsection (1), the court may require a person to perform one hundred hours of community service if the government agency that is responsible for supervising the graffiti removal lacks the necessary resources to ensure the person's compliance with subsection (1).

[(2)] (3) For purposes of this section, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 23, 2011.)

ACT 157

H.B. NO. 593

A Bill for an Act Relating to Nomination Papers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 12-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No candidate's name shall be printed upon any official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed ~~in~~ on the candidate's behalf and in the name by which the candidate is commonly known. The nomination paper shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

- (1) A statement by the registered voters signing the form that they are eligible to vote for the candidate;
- (2) A statement by the registered voters signing the form that they nominate the candidate for the office identified on the nomination paper issued to the candidate;
- (3) The residence address and county in which the candidate resides;
- (4) The legal name of the candidate, the name by which the candidate is commonly known, if different, the office for which the candidate is running, and the candidate's party affiliation or nonpartisanship; all of which are to be placed on the nomination paper by the chief election officer or the clerk prior to releasing the form to the candidate;
- (5) Space for the name, signature, date of birth, last four digits of the social security number, and residence address of each registered voter signing the form, and other information as determined by the chief election officer; provided that no more than the last four digits of a voter's social security number shall be required;
- (6) A sworn certification by self-subscribing oath by the candidate that the candidate qualifies under the law for the office the candidate is seeking and that the candidate has determined that, except for the

information provided by the registered voters signing the nomination papers, all of the information on the nomination papers is true and correct;

- (7) A sworn certification by self-subscribing oath by a party candidate that the candidate is a member of the party;
- (8) For candidates seeking elective county office, a sworn certification by self-subscribing oath by the candidate that the candidate has complied with the relevant provisions of the applicable county charter and county ordinances pertaining to elected officials;
- [(8)] (9) A sworn certification by self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of article II, section 7, of the [~~Constitution of the State of Hawaii;~~] Hawaii State Constitution;
- [(9)] (10) A sworn certification by self-subscribing oath by the candidate that the candidate is in compliance with section 831-2, dealing with felons, and is eligible to run for office; and
- [(10)] (11) The name the candidate wishes to be printed on the ballot and the mailing address of the candidate.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 158

H.B. NO. 960

A Bill for an Act Relating to Low-Income Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The state low-income housing tax credit under section 235-110.8, Hawaii Revised Statutes, was established to help finance the development or substantial rehabilitation of affordable rental housing. Under the program, an owner of a qualified low-income building who is awarded state tax credits will typically sell the credits to investors. Investors receive a dollar-for-dollar offset in state income tax liability over a ten-year period and owners generate project equity to help finance the rental housing development. With the economic downturn and diminished investor demand and subsequently weakened value for state low-income housing tax credits, owners are unable to generate sufficient project equity through the sale of the credits. On average, for every dollar of tax credit provided, only twenty-five cents is realized in project equity. Consequently, the development or preservation of affordable rental housing has stalled.

The legislature finds that the need for affordable rental housing is substantial. By 2015, approximately seventeen thousand four hundred affordable rental housing units will be needed for households earning eighty per cent and below of the median family income. Due to the lack of affordable rental housing, these households carry heavy burdens with regard to the cost of rent, housing quality, overcrowding, and risk of homelessness.

The legislature also finds that because of the weakened value of state low-income housing tax credits, the program is not able to effectively produce or preserve sorely-needed rental housing. Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, a federal program that has al-

lowed for the exchange of federal tax credits awarded under a state's low-income housing tax credit volume cap for direct loans, has stimulated the development of rental housing projects across the nation. A similar state program allowing for the exchange of state low-income housing credits for direct loans would stimulate rental housing projects in Hawaii.

The legislature also finds that forgiveness of the amount under the proposed direct loans after thirty years for an affordable rental housing project would provide an additional incentive to stimulate affordable rental housing development, and is therefore in the public interest.

The purpose of this Act is to encourage the development and preservation of rental housing for lower income households by creating a cost-effective financing mechanism for projects that are awarded state low-income housing tax credits.

SECTION 2. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§201H- Low-income housing tax credit loan. (a) The corporation may provide a no-interest low-income housing tax credit loan to an owner of a qualified low-income building that has been awarded federal tax credits that are subject to the state housing credit ceiling under section 42(h)(3)(C) of the Internal Revenue Code, federal credits that are allocated pursuant to section 42(h)(4) of the Internal Revenue Code, or a subaward under Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. The loan shall be in an amount equal to seventy per cent of the cash value of the amount of the low-income housing tax credit that would otherwise have been claimable with respect to the qualified low-income building under section 235-110.8 for each taxable year in the ten-year credit period, discounted to present day value and capitalized at the rate of interest on the taxable general obligation bonds used to fund the loan.

(b) An owner who is provided a low-income housing tax credit loan under this section shall not be eligible for the state income tax credit under section 235-110.8.

(c) The corporation shall impose conditions or restrictions on the low-income housing tax credit loan, including:

- (1) A requirement providing for acceleration and repayment on any no-interest loan under this section to assure that the building with respect to which the loan is made remains a qualified low-income building under section 42 of the Internal Revenue Code or Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. Any such repayment shall be payable to the housing finance revolving fund and may be enforced by means of liens or other methods as the corporation deems appropriate;
- (2) The same limitations on rent, income, and use restrictions as applied under an allocation of a housing credit dollar amount allocated under section 42 of the Internal Revenue Code; and
- (3) The payment of reasonable fees for the corporation to perform or cause to be performed asset management functions to ensure compliance with section 42 of the Internal Revenue Code and the long-term viability of buildings funded by any no-interest loan under this section.

(d) The corporation shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code or Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, to

sustain the long-term viability of buildings funded by a no-interest loan under this section.

(e) The corporation may collect reasonable fees from the owner of a qualified low-income building to cover expenses associated with the performance of the corporation's duties under this section and may retain an agent or other private contractor to satisfy the requirements of this section.

(f) If the owner is not in default, the corporation may forgive the amount remaining under the no-interest loan to the owner of the qualified low-income building after thirty years.

(g) For purposes of this section, "qualified low-income building" shall have the same meaning as used in section 42(c)(2) of the Internal Revenue Code."

SECTION 3. Section 235-110.8, Hawaii Revised Statutes, is amended to read as follows:

"§235-110.8 Low-income housing tax credit. (a) Section 42 (with respect to low-income housing credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section. A taxpayer owning a qualified low-income building who has been awarded a subaward under Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, shall also be eligible for the credit provided in this section.

(b) Each taxpayer subject to the tax imposed by this chapter, who has filed ~~[[a]]~~ net income tax return for a taxable year may claim a low-income housing tax credit against the taxpayer's net income tax liability. The amount of the credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed on a timely basis. A credit under this section may be claimed whether or not the taxpayer claims a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code.

(c) The amount of the low-income housing tax credit that may be claimed by a taxpayer as provided in subsection (b) shall be fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.

(d) If a subaward under Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, has been issued for a qualified low-income building, the amount of the low-income housing tax credits that may be claimed by a taxpayer as provided in subsection (b) shall be equal to fifty per cent of the amount of the federal low-income housing tax credits that would have been allocated to the qualified low-income building pursuant to section 42(b) of the Internal Revenue Code by the corporation had a subaward not been awarded with respect to the qualified low-income building.

~~[(d)]~~ (e) For the purposes of this section, the determination of:

- (1) Qualified basis and qualified low-income building shall be made under section 42(c);
- (2) Eligible basis shall be made under section 42(d);
- (3) Qualified low-income housing project shall be made under section 42(g);
- (4) Recapture of credit shall be made under section 42(j), except that the tax for the taxable year shall be increased under section 42(j)(1) only with respect to credits that were used to reduce state income taxes; and
- (5) Application of at-risk rules shall be made under section 42(k);

of the Internal Revenue Code.

~~(e)~~ (f) As provided in section 42(e), rehabilitation expenditures shall be treated as a separate new building and their treatment under this section shall be the same as in section 42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special rules in section 42(i) shall be operative for the purposes of this section.

~~(f)~~ (g) The state housing credit ceiling under section 42(h) shall be zero for the calendar year immediately following the expiration of the federal low-income housing tax credit program and for any calendar year thereafter, except for the carryover of any credit ceiling amount for certain projects in progress which, at the time of the federal expiration, meet the requirements of section 42.

~~(g)~~ (h) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of deducting this tax credit, net income tax liability means net income tax liability reduced by all other credits allowed the taxpayer under this chapter.

A tax credit under this section ~~which~~ that exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section ~~must~~ shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to properly and timely claim the credit shall constitute a waiver of the right to claim the credit. A taxpayer may claim a credit under this section only if the building or project is a qualified low-income housing building or a qualified low-income housing project under section 42 of the Internal Revenue Code.

Section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section.

(i) In lieu of the credit awarded under this section for a qualified low-income building that has been awarded federal credits that are subject to the state housing credit ceiling under section 42(h)(3)(C) of the Internal Revenue Code, federal credits that are allocated pursuant to section 42(h)(4) of the Internal Revenue Code, or a subaward under Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, the taxpayer owning the qualified low-income building may make a request to the corporation for a loan under section 201H- . If the taxpayer elects to receive the loan pursuant to section 201H- , the taxpayer shall not be eligible for the credit under this section.

~~(h)~~ (j) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2011, and shall apply to qualified low-income buildings placed in service after December 31, 2011.

(Approved June 23, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any candidate may withdraw not later than 4:30 p.m. on the day immediately following the close of filing for any reason and may withdraw after the close of filing up to 4:30 p.m. on the twentieth day prior to an election for reasons of ill health. When a candidate withdraws for ill health, the candidate shall give notice in writing to the chief election officer if the candidate was seeking a congressional or state office, or the candidate shall give notice in writing to the county clerk if the candidate was seeking a county office. The notice shall be accompanied by a statement from a licensed physician or physician assistant indicating that such ill health may endanger the candidate’s life.

A candidate who withdraws the candidate’s own nomination papers prior to the close of filing shall not be considered to have caused a vacancy that may be filled by a party under section 11-118.”

SECTION 2. Section 11-118, Hawaii Revised Statutes, is amended to read as follows:

“§11-118 Vacancies; new candidates; insertion of names on ballots. (a) In case of death, withdrawal, or disqualification of any party candidate [after filing], the vacancy so caused may be filled by the party. The party shall be notified by the chief election officer or the clerk in the case of a county office immediately after the death, withdrawal, or disqualification.

(b) If the party fills the vacancy, and so notifies the chief election officer or clerk not later than 4:30 p.m. on the third day after the vacancy occurs, but not later than 4:30 p.m. on the fiftieth day prior to a primary or special primary election or not later than 4:30 p.m. on the fortieth day prior to a special, general, or special general election, the name of the replacement shall be printed in an available and appropriate place on the ballot, not necessarily in alphabetical order; provided that the replacement candidate fills out an application for nomination papers [and], signs the proper certifications on the nomination paper, and takes either an oath or affirmation as provided by law. If the party fails to fill the vacancy pursuant to this subsection, no candidate’s name shall be printed on the ballot for the party for that race.

(c) If the ballots have been printed and it is not reasonably possible to insert an alternate’s name, the chief election officer shall issue a proclamation informing the public that the votes cast for the vacating candidate shall be counted and the results interpreted as follows:

(1) In a primary or special primary election:

(A) In partisan races, if, but for candidate’s vacancy, the vacating candidate would have been nominated pursuant to section 12-41(a), a vacancy shall exist in the party’s nomination, to be filled in accordance with subsection (b)]-]; and

(B) In nonpartisan races, if, but for the candidate’s vacancy, the vacating candidate would have qualified as a candidate for the general or special general election ballot pursuant to section 12-41(b), the nonpartisan candidate who received the next highest number of votes shall be placed on the ballot; provided

that the candidate also meets the requirements of section 12-41(b)[-];

- (2) In a special, general, or special general election, if, but for the candidate's vacancy, the vacating candidate would have been elected, a vacancy shall exist in the office for which the race in question was being held, to be filled in the manner provided by law for vacancies in office arising from the failure of an elected official to serve the official's full term because of death, withdrawal, or removal[-]; and
- (3) In any other case where, but for the candidate's vacancy, the vacating candidate would have been deemed elected, a vacancy shall exist in the office for which the candidate has filed, to be filled in the manner provided by law for vacancies in office arising from the failure of an elected official to serve the official's full term in office because of death, withdrawal, or removal.
- (d) The parties shall adopt rules to comply with this provision, and those rules shall be submitted to the chief election officer.

(e) The chief election officer or county clerk in county elections may waive any or all of the foregoing requirements in special circumstances as provided in the rules adopted by the chief election officer.

(f) For the purposes of this section, "party candidate" means the person or persons who would be the candidate or candidates of the party under section 12-41(a)."

SECTION 3. Section 12-3, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Nomination papers [which] that are incomplete and do not contain all of the certifications, signatures, and requirements of this section shall be void [and will not be accepted for filing by the chief election officer or clerk]."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 160

H.B. NO. 1434

A Bill for an Act Relating to Public Work Projects.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that under current law, each investigation of a contractor that reveals violations of the prevailing wage law contained in chapter 104, Hawaii Revised Statutes, may result in a finding of only one violation even though the contractor may have committed multiple or recurring violations on multiple public work projects. The purpose of this Act is to ensure that a separate violation of chapter 104, Hawaii Revised Statutes, shall be found for each separate project for which the department of labor and industrial relations finds that a contractor has failed to comply with the law.

SECTION 2. Section 104-24, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) A first, second, or third violation refers to each ~~[investigation involving one or more projects]~~ project in which the department finds that a contractor has failed to comply with this chapter.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 23, 2011.)

ACT 161

H.B. NO. 1447

A Bill for an Act Relating to the Permitted Transfers in Trust Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii continues to lay the foundation necessary to attract foreign-source capital and to retain local capital through proven domestic and international estate and financial planning methodologies. The legislature further finds that the original intent of the permitted transfers in trust act was to offer incentives to high net-worth individuals throughout the United States and the world to transfer a portion of their liquid net worth into this State for asset and trust management. It is the legislature's intent to achieve the original purpose of the permitted transfers in trust act and to make Hawaii a more competitive investment environment in the national and local marketplace.

The purpose of this Act is to amend the permitted transfers in trust act by allowing increased flexibility in the type and extent of assets that may be managed by Hawaii's private financial sector, thereby increasing state tax revenues and better positioning the State as a world-class financial management jurisdiction.

SECTION 2. Chapter 554G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§554G- **Advisors.** (a) A transferor may appoint, through the trust instrument, one or more advisors or protectors, including:

- (1) Advisors who have authority under the terms of the trust to remove and appoint trustees, advisors, trust committee members, or protectors;
 - (2) Advisors who have authority under the terms of the trust to direct, consent to, or disapprove of distributions from the trust; and
 - (3) Advisors, including the transferor beneficiary of the trust, who serve as investment advisors to the trust.
- (b) While a trustee may appoint an advisor, the administrative and non-administrative authority over the trust shall remain with the trustee.

(c) Notwithstanding subsection (b), whenever there is a dispute, deadlock, or difference of opinion between a trustee and an advisor, the transferor may direct that the determination of the advisor shall be binding upon the

trustee; provided that the trustee shall bear no liability or accountability for any act or transaction entered into as a result of the enforcement of the advisor's determination. The trustee's administrative and non-administrative fiduciary duty to the beneficiaries shall be waived as to the specific act or executed transaction; provided that the trustee dissents in writing before the act or transaction is completed."

SECTION 3. Section 554G-2, Hawaii Revised Statutes, is amended to read as follows:

~~“[§554G-2] Definitions.~~ As used in this chapter:

~~“Cash” means United States currency.]~~

~~“Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.~~

~~“Creditor” means, with respect to a transferor, a person who has a claim.~~

~~“Debt” means liability on a claim.~~

~~“Former spouse” means a person to whom the transferor was married where the marriage was dissolved before the time of the permitted transfer[-], or person with whom the transferor was in a civil union where the civil union was dissolved before the time of the permitted transfer.~~

~~“Grantor trust” means a trust described in sections 671 through 679 of the Internal Revenue Code of 1986, as amended.~~

~~“Marketable securities” means securities that are:~~

- ~~(1) Exchanged on a governmentally regulated exchange within the United States including, common stocks, bonds, mutual funds, or exchange traded funds; and~~
- ~~(2) Permitted to be held by a fiduciary under Hawaii state law; provided that “marketable securities” does not include real estate or any interests in corporations, partnerships, and limited liability companies that are not publicly traded.~~

~~“Non grantor trust” shall refer to any trust that is not a “grantor trust” as defined in this chapter.]~~

~~“Permitted property” [means cash, marketable securities, life insurance contracts, and non-private annuities.] includes real property, personal property, and interests in real or personal property.~~

~~“Permitted transfer” means a transfer of permitted property by or from [a transferor to] one or more transferors who own an undivided interest in the property to one or more trustees, at least one of which is a permitted trustee, by means of a trust instrument, regardless of whether consideration is exchanged. In the case of a transfer to more than one trustee, a disposition that is otherwise a permitted transfer shall not be treated as other than a permitted transfer solely because not all of the trustees are qualified trustees.~~

~~“Permitted trustee” means a person, other than the transferor, who is a resident of this State[;] or a bank or trust company that is authorized to do business in this State [that], possesses and exercises trust powers [and], has its principal place of business in this State[-]; and:~~

- ~~(1) Maintains or arranges for custody of some or all of the property that is the subject of the permitted transfer;~~
- ~~(2) Maintains records for the trust on an exclusive or nonexclusive basis;~~
- ~~(3) Prepares or arranges for the preparation of fiduciary income tax returns; or~~

(4) Otherwise materially participates in the administration of the trust.
“Person” means a natural person.

“Spouse” means a person to whom the transferor is married or with whom the person is party to a civil union at the time of the permitted transfer.

“Transfer” means the disposition, conveyance, or assignment of ~~[permitted] property [to a permitted trustee]~~, including the change in the legal ownership of property occurring upon the substitution of one trustee for another or the addition of one or more new trustees, or the exercise of a power that causes the disposition, conveyance, or assignment of permitted property to a ~~[permitted] trustee[-] or trustees~~, but shall not include the release or relinquishment of an interest in property that was formerly the subject of a permitted transfer.

~~“Transfer tax” means the tax described in section 554G-12.]~~

“Transferor” means ~~[a]~~:

- (1) An owner of permitted property; ~~[a]~~
- (2) The holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder’s creditors, the holder’s estate, or the creditors of the holder’s estate; or ~~[a]~~
- (3) A trustee who directly or indirectly makes a disposition of permitted property.

“Trust instrument” means an irrevocable instrument appointing a permitted trustee or permitted trustees for the permitted property that is the subject of a disposition.

“Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.”

SECTION 4. Section 554G-4, Hawaii Revised Statutes, is amended to read as follows:

~~“[§554G-4] Permitted trustees. (a) A permitted trustee means a person, other than the transferor, who is a resident of this State, or a bank or trust company authorized to do business in this State that possesses and exercises trust powers and has its principal place of business in this State.~~

~~(b) If a permitted trustee of a trust ceases to meet the [requirements of subsection (a)] criteria for a permitted trustee as defined in section 554G-2, and there remains no trustee that meets the requirements, the permitted trustee shall be deemed to have resigned as of the time that the trustee [no longer meets the requirements of subsection (a)] ceases to meet the criteria. At that time, the successor permitted trustee provided for in the trust instrument shall become the permitted trustee of the trust. In the absence of any successor permitted trustee provided for in the trust instrument, a trust advisor or protector provided for in the trust instrument shall appoint a successor permitted trustee. In the absence of [an appointed] a designated trust advisor or protector[, a Hawaii court of competent jurisdiction shall,] or in the event of the failure of the designated trust advisor or protector to appoint a successor permitted trustee, the circuit court sitting in probate, upon application of any interested party, shall appoint a successor permitted trustee.~~

~~(c) A permitted trustee may appoint an investment advisor to manage the assets of the trust fund; provided that administrative and non-administrative fiduciary responsibility shall remain vested, as against beneficiaries of the trust, with the permitted trustee.]”~~

SECTION 5. Section 554G-5, Hawaii Revised Statutes, is amended to read as follows:

~~“§§554G-5”~~ **Trust instrument.** (a) A trust instrument shall be irrevocable and shall expressly incorporate the laws of this State governing the validity, construction, and administration of the trust.

(b) The trustee, in its discretion, may terminate any trust if and when its fair market value has declined to the extent that would make it uneconomical, imprudent, or unwise to continue to retain the trust, and shall pay and distribute the trust to the persons entitled to mandatory or discretionary income distributions as the trustee in the trustee's absolute discretion shall decide.

(c) A trust instrument shall not be deemed revocable on account of the inclusion of:

- (1) A transferor's power to veto a distribution from the trust;
- (2) A power of appointment other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate that may be exercised by will or other written instrument of the transferor effective only upon the transferor's death;
- (3) The transferor's potential or actual receipt of income, including rights to income retained in the trust instrument;
- (4) The transferor's annual receipt of a percentage not to exceed five per cent of the initial value of the trust assets or its value determined from time to time pursuant to the trust instrument or of a fixed amount that on an annual basis does not exceed five per cent of the initial value of the trust assets;
- (5) The transferor's potential or actual receipt or use of the trust's principal due to ~~the discretionary action of a permitted trustee or~~ the trustee acting:

(A) In the trustee's discretion;

(B) Pursuant to a provision in the trust instrument that governs the distribution of principal; provided that any included provision shall and that does not confer upon the transferor a substantially unfettered right to the receipt or use of the principal; or

(C) At the direction of an advisor described in section 554G- who is acting:

(i) In the advisor's discretion;

(ii) Pursuant to a provision in the trust instrument that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt or use of the principal; or

(iii) Pursuant to the transferor's determination under section 554G- (c) of a dispute, deadlock, or difference of opinion in favor of the advisor;

provided that for purposes of this paragraph, a trustee is presumed to have discretion with respect to the distribution of principal unless that discretion is expressly denied to the trustee by the terms of the trust instrument;

- (6) The transferor's right to remove a ~~permitted~~ trustee or advisor and to appoint a new ~~permitted~~ trustee or advisor;
- (7) The transferor's potential or actual receipt of income or principal to pay income taxes due on income of the trust if the trust instrument includes a provision allowing or directing the use of trust funds to pay income taxes due, or if the ~~permitted~~ trustee acts in the trustee's discretion to allow payment of income taxes due on the trust income; ~~or~~

- (8) A ~~permitted~~ trustee's authority pursuant to discretion, direction, or the transferor's exercise of a testamentary power of appointment to pay all or any part of the transferor's debts outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate~~[-]~~;
- (9) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust, as those terms are defined in section 664 of the Internal Revenue Code and any successor provision; and the transferor's right, at any time and from time to time by written instrument delivered to the trustee, to release the transferor's retained interest in the trust, in whole or in part, in favor of one or more charitable organizations with a succeeding beneficial interest in the trust;
- (10) The transferor's potential or actual receipt of income or principal from a grantor-retained annuity trust or grantor-retained unitrust, pursuant to Title 26 Code of Federal Regulations Section 25.2702-3 and any successor provision, or the transferor's receipt each year of a percentage specified in the governing instrument of the initial value of the trust assets or their value determined from time to time pursuant to the governing instrument; provided that the percentage received does not exceed five per cent; or
- (11) The transferor's potential or actual use of real property held under a qualified personal residence trust, as described in Title 26 Code of Federal Regulations Section 25.2702-5(c) and any successor provision, or the transferor's possession and enjoyment of a qualified annuity interest, as described in Title 26 Code of Federal Regulations Section 25.2702-5(c)(8) and any successor provision thereto.

(d) A trust instrument may provide that the interest of a beneficiary of the trust, including a beneficiary who is the transferor of the trust, may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the ~~permitted~~ trustee actually distributes the property or income to the beneficiary. Any provision of this type contained in the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Title 11 United States Code ~~[section]~~ Section 541(c)(2) of the Bankruptcy Code or any successor provision.

~~(e) A transferor may appoint, through the trust instrument, one or more advisors or protectors, including the following:~~

- ~~(1) Advisors who have authority under the terms of the trust to remove and appoint permitted trustees, advisors, or protectors;~~
- ~~(2) Advisors who have authority under the terms of the trust to direct, consent to, or disapprove of distributions from the trust; and~~
- ~~(3) Advisors, including the transferor beneficiary of the trust, who serve as investment advisors to the trust.~~

~~(f) Whenever there shall be a dispute, deadlock, or difference of opinion between a permitted trustee and an advisor, the transferor may direct that the determination of the advisor shall be binding upon the permitted trustee, but that the permitted trustee shall bear no liability or accountability for any act or transaction entered into as a result of the enforcement of the advisor's privilege if the permitted trustee dissents in writing.~~

~~(g)~~ (e) If a trustee of a trust existing prior to the enactment of this chapter proposes to make a permitted transfer, but the trust instrument does not contain a power of appointment that conforms to section 554G-5(c)(2), the

trustee may deliver an irrevocable written election to have section 554G-5(c)(2) apply to the trust[5] and the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform with section 554G-5(c)(2). The irrevocable written election shall include a description of the original transferor's powers of appointment as modified, and the original transferor's written consent to the modification. Consent of the original transferor to a modification of powers of appointment shall not be considered to be a permitted transfer.

~~(h)~~ (f) If, in any action brought against a trustee of a trust that results from a permitted transfer, a court declines to apply the law of this State in determining the validity, construction, or administration of the trust[5] or the effect of a spendthrift provision of the trust, the trustee, immediately upon the court's action and without the further order of any court, shall cease to be trustee of the trust and a successor trustee shall ~~thereupon~~ succeed as trustee in accordance with the terms of the trust instrument. If the trust instrument does not provide for a successor trustee or does not provide for an advisor or protector with powers to appoint successor trustees, a Hawaii court of competent jurisdiction shall appoint a successor permitted trustee upon the application of any beneficiary of the trust under any terms and conditions that the court determines to be consistent with the purposes of the trust and with this chapter. Upon the removal of a trustee pursuant to this section, the trustee who has been removed shall have no power or authority other than to convey the trust property to the successor trustee."

SECTION 6. Section 554G-6, Hawaii Revised Statutes, is amended to read as follows:

~~"[§554G-6] Investments. Nothing in this chapter shall prohibit a [permitted] trustee from diversifying trust assets; provided that a permitted trustee shall be authorized to invest only in permitted property, as defined in this chapter]."~~

SECTION 7. Section 554G-7, Hawaii Revised Statutes, is amended to read as follows:

~~"[§554G-7] Retained interests of transferor. (a) A permitted transfer shall be subject to this chapter notwithstanding a transferor's retention of any or all of the powers and rights described in section 554G-5(c) and notwithstanding the transferor's service as investment advisor pursuant to section [554G-5(e)(3)]. 554G-____(a)(3).~~

(b) The transferor shall have only the powers and rights specifically conferred by the trust instrument. Except as permitted by sections 554G-5(c) and ~~[554G-5(e)], 554G-____(a)(3)~~, a transferor shall have no rights or authority with respect to the property that is the subject of a permitted transfer or to the income from property that is the subject of a permitted transfer. Any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void."

SECTION 8. Section 554G-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

~~"(b) An allowable claim under subsection (a) [of this section] shall be extinguished unless:~~

(1) The creditor's claim arose before the permitted transfer was made and the action is brought within the limitations of section 651C-9

on the latter of the date of the permitted transfer or [~~the date of the enactment of this section;~~] July 1, 2010; or

- (2) [~~The~~] Notwithstanding the provisions of section 651C-9, the creditor's claim arose concurrent with or subsequent to the permitted transfer, and the action is brought within two years after the permitted transfer is made."

2. By amending subsection (f) to read:

"(f) No creditor or any other person shall have any claim or cause of action, including an action to enforce a judgment entered by a court or other body having adjudicative authority, against a trustee or advisor described in section [~~554G-4(e)~~] 554G- (a) or against any person involved in drafting, preparing, executing, or funding a trust or in counseling the parties to a trust that is the subject of a permitted transfer if, as of the date [ef] the action[~~, the~~] is brought, an action with respect to the permitted transfer would be barred under this section."

SECTION 9. Section 554G-9, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§554G-9]] Limitations on permitted transfers. The limitations contained in section 554G-8 on actions by creditors to avoid permitted transfers shall not apply to:**

- (1) Any person to whom the transferor is indebted on account of a family court-supervised agreement or family court order for the payment of support or alimony to the transferor's spouse, former spouse, or children, or for a division or distribution of property to the transferor's spouse or former spouse[~~];~~; provided that the transferor is in default by thirty days or more of making a payment due under the agreement or order, but only to the extent of the debt and not to any claim for forced heirship, legitime, or elective share;
- (2) Any person who suffers death, personal injury, or property damage on or before the date of a permitted transfer; provided that the death, personal injury, or property damage is determined to have been caused in whole or in part by the tortious act or omission of either the transferor or another person for whom the transferor is or was vicariously liable to the extent of the transferor's liability or vicarious liability;
- (3) Any lender who extends a secured or collateralized loan to the transferor based on the transferor's or the transferor's agent's express or implied representation that the assets of a trust established under this chapter would be available as security against the loan in the event of the transferor's default thereon; [~~or~~]
- (4) The State of Hawaii to the extent that a transfer results in the transferor being unable to meet the transferor's tax liabilities, but only to the extent necessary to extinguish the outstanding tax liabilities[~~];~~ or
- (5) A divorce or dissolution of marriage or civil union, for purposes of considering property subject to division under section 580-47, a transferor-beneficiary's interest with respect to assets transferred to the trust instrument:
 - (A) After the transferor's marriage or entry into a civil union; or
 - (B) Within thirty days prior to the transferor's marriage or civil union unless the transferor gives written notice to the other party to the marriage or civil union of the transfer; provided that in the event of the divorce or dissolution of the marriage

or civil union of a non-transferor beneficiary of the trust, the non-transferor beneficiary's interest in the trust is not considered property subject to division under section 580-47."

SECTION 10. Section 554G-10, Hawaii Revised Statutes, is amended to read as follows:

~~“[§554G-10]~~ **Effect of avoidance of permitted transfers.** (a) A creditor may avoid a permitted transfer pursuant to section 554G-8 only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the transfer has been avoided, together with costs[;] including attorney's fees[;] as allowed by a court.

(b) In an action pursuant to subsection (a) to avoid a permitted transfer:

(1) If a court finds that a trustee has not acted with intent to defraud, hinder, or delay the creditor in accepting or administering the property that is the subject of the permitted transfer:

(A) The trustee shall have a first and paramount lien against the property that is the subject of the permitted transfer in an amount equal to the entire cost[;] including attorney's fees[;] properly incurred by the trustee in the defense of the action or proceedings to avoid the permitted transfer; ~~and~~

(B) The permitted transfer shall be avoided, subject to payment of proper fees, costs, preexisting rights, claims, and interests of the trustee and of any predecessor trustee who has not acted with intent to defraud, hinder, or delay the creditor; and

(C) For purposes of this paragraph, it shall be presumed that the trustee did not act with intent to defraud, hinder, or delay the creditor merely by accepting the property; and

(2) If the court is satisfied that a beneficiary of the trust has not acted with intent to defraud, hinder, or delay the creditor, the permitted transfer shall be avoided subject to the beneficiary's right to retain any distribution made prior to the creditor's commencement of an action to avoid the permitted transfer~~[-For];~~ provided that for purposes of this paragraph, it shall be presumed that a beneficiary did not act with intent to defraud, hinder, or delay the creditor merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A creditor who brings an action pursuant to section 554G-8 to avoid a permitted trust shall have the burden of proving by clear and convincing evidence that a trustee or beneficiary acted with intent to defraud, hinder, or delay the creditor; provided that in the case of a beneficiary who is also the transferor, the burden on the creditor shall be to prove by a preponderance of the evidence that the transferor-beneficiary acted with intent to defraud, hinder, or delay the creditor. ~~[Mere acceptance of permitted property by a trustee shall not constitute evidence of intent to defraud, hinder, or delay a creditor.]~~

(d) For purposes of this chapter, attachment, garnishment, sequestration, or other legal or equitable process shall be permitted only where permitted by the express terms of this chapter.

~~[(d)]~~ (e) Notwithstanding any other provision of this chapter, a creditor shall have no right against the interest of a beneficiary to a trust based solely on the beneficiary's right to authorize or direct the trustee to use all or part of the trust property to pay:

- (1) Estate or inheritance taxes imposed upon or due to the beneficiary's estate;
- (2) Debts of the beneficiary's estate; or
- (3) Expenses of administering the beneficiary's estate^{[1], [1]}

unless the beneficiary actually directs the payment of taxes, debts, or expenses and then only to the extent of that direction.

(f) Where spouses make a permitted transfer of property and, immediately before the permitted transfer, the property, any part of the permitted property, or any accumulation to the permitted property was, pursuant to applicable law, owned by them as tenants by the entirety, then notwithstanding the permitted transfer and except where the provisions of the trust instrument expressly provide to the contrary, the property and any accumulation to the property, while held in trust during the lifetime of both spouses, shall be treated as though it were held in tenancy by the entirety and shall be subject to all applicable law; provided that in every other respect, the property shall be subject to the terms of the trust instrument.

In any action concerning whether a creditor of either or both spouses may recover the debt from the trust, upon avoidance of the permitted transfer the sole remedy available to the creditor with respect to trust property treated as though it were held in tenancy by the entirety shall be an order directing the trustee to transfer the property to both spouses as tenants by the entirety.

(g) Subject to all of the provisions of this section and except as otherwise provided in subsection (f), upon avoidance of a qualified disposition to the extent permitted under subsection (a), the sole remedy available to the creditor shall be an order directing the trustee to transfer to the transferor the amount necessary to satisfy the transferor's debt to the creditor at whose instance the disposition has been avoided."

SECTION 11. Section 554G-3, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 554G-12, Hawaii Revised Statutes, is repealed.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 15. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 162

S.B. NO. 1328

A Bill for an Act Relating to Motor Vehicle Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 249-31, Hawaii Revised Statutes, is amended to read as follows:

“§249-31 State registration fee. (a) All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections 249-4 and 249-6, shall be subject to a [~~\$25~~] \$45 annual vehicle registration fee. The fee shall be paid each year together with all other taxes and fees levied by this chapter on a staggered basis as established by each county as authorized by section 286-51, and the state registration for that county shall likewise be staggered so that the state registration fee is due and payable at the same time and shall be collected together with the county fee. The state registration fee shall be deemed delinquent if not paid with the county registration fee. The respective counties shall collect this fee together with the vehicle registration tax collected for the county and shall transfer the moneys collected under this section to the State.

(b) From each annual motor vehicle registration fee, the director shall deposit [~~\$20~~] \$40 into the state highway fund and \$5 into the emergency medical services special fund.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

ACT 163

H.B. NO. 1038

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 88-45, Hawaii Revised Statutes, is amended to read as follows:

“§88-45 Employee contributions. After June 30, 1988, each class A and class B member shall contribute seven and eight-tenths per cent of the member's compensation to the annuity savings fund; provided that after June 30, 1989, all firefighters, police officers, corrections officers, investigators of the departments of the prosecuting attorney and of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators shall contribute twelve and two-tenths per cent of their compensation to the annuity savings fund for service in that capacity[-]; provided further that each class A and class B member who becomes a member after June 30, 2012, shall contribute nine and eight-tenths per cent of the member's compensation to the annuity savings fund; provided further that all firefighters, police officers, corrections officers, investigators of the departments of the prosecuting attorney and of the attorney general, narcotics enforcement investigators, and public safety investigations staff investigators who become members after June 30, 2012, shall contribute fourteen and two-tenths per cent of their compensation to the annuity savings fund for service in that capacity.”

SECTION 2. Section 88-59.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any member who on July 1, 1991, was serving or previously served as an assistant clerk or assistant sergeant at arms of either house of the legislature and becomes eligible for retirement benefits as a class A member as provided under sections 88-73(a), [88-74(a)(3);] 88-74(d), and 88-76 shall be entitled to full service credit as a class A member for any eligible service prior to July 1, 1991; provided that:

- (1) The member claims those years as membership service credit and purchases that membership service credit in accordance with section 88-59; and
- (2) Notwithstanding any other law to the contrary:
 - (A) If the member was a class A member of the system and elected to become a class C member pursuant to section 88-271, the member repurchases all the years of service as a class C member in accordance with the procedures under section 88-59 to regain standing as a contributory member; and
 - (B) A class C member shall be credited for service as an assistant clerk or assistant sergeant at arms under section 88-59 in a lump sum nonrefundable payment and receive retirement benefits as provided in this section.”

SECTION 3. Section 88-62, Hawaii Revised Statutes, is amended to read as follows:

“**§88-62 Return to service of a former member.** (a) For members who became members before July 1, 2012:

- (1) If a former member who has [less] fewer than five years of credited service and who has been out of service for a period of four full calendar years or more after the year in which the former member left service, or if a former member who withdrew the former member’s accumulated contributions returns to service, the former member shall become a member in the same manner and under the same conditions as anyone first entering service; however, the former member may obtain membership service credit in the manner provided by applicable law for credited service that was forfeited by the member upon termination of the member’s previous membership. If the member did not withdraw the former member’s accumulated contributions prior to the former member’s return to service, the accumulated contributions shall be returned to the member as part of the process of enrolling the member in the system if the member’s accumulated contributions are \$1,000 or less at the time of distribution. If the accumulated contributions for the service the member had when the member previously terminated employment are greater than \$1,000 and the member does not make written application, prior to or contemporaneously with the member’s return to service, for return of the accumulated contributions, the member may not withdraw the member’s accumulated contributions, except as provided by section 88-96 or 88-341, until the member retires or attains age sixty-two. The member shall not be entitled to service credit by reason of the system’s retention of the member’s accumulated contributions for the service the member had when the member previously terminated employment.

To be eligible for any benefit, the member shall fulfill the membership service requirements for the benefit through membership service after again becoming a member, in addition to meeting any

- other eligibility requirement established for the benefit; provided that the membership service requirement shall be exclusive of any former service acquired in accordance with section 88-59 or any other section in part II, VII, or VIII[-];
- ~~[(b)]~~ (2) If a former member with [less] fewer than five years of credited service and who did not withdraw the former member's accumulated contributions returns to service within four full calendar years after the year in which the former member left service, the former member shall again become a member in the same manner and under the same conditions as anyone first entering service, except that the member shall be credited with service credit for the service the member had when the member terminated employment and:
- ~~[(4)]~~ (A) If the member returns to service as a class A or class B member, the member's new and previous accumulated contributions shall be combined; or
- ~~[(2)]~~ (B) If the member returns to service after June 30, 2006, as a class H member, section 88-321(b) shall apply[-]; and
- ~~[(e)]~~ (3) If a former member with five or more years of credited service who did not withdraw [his] the former member's contributions returns to service, [his] the former member's status shall be in accordance with the provisions described in section 88-97.
- (b) For members who become members after June 30, 2012:
- (1) If a former member who has fewer than ten years of credited service and who has been out of service for a period of four full calendar years or more after the year in which the former member left service, or if a former member who withdrew the former member's accumulated contributions returns to service, the former member shall become a member in the same manner and under the same conditions as anyone first entering service; however, the former member may obtain membership service credit in the manner provided by applicable law for credited service that was forfeited by the member upon termination of the member's previous membership. If the member did not withdraw the former member's accumulated contributions prior to the former member's return to service, the accumulated contributions shall be returned to the member as part of the process of enrolling the member in the system if the member's accumulated contributions are \$1,000 or less at the time of distribution. If the accumulated contributions for the service the member had when the member previously terminated employment are greater than \$1,000 and the member does not make written application, prior to or contemporaneously with the member's return to service, for return of the accumulated contributions, the member may not withdraw the member's accumulated contributions, except as provided by section 88-96 or 88-341, until the member retires or attains age sixty-two. The member shall not be entitled to service credit by reason of the system's retention of the member's accumulated contributions for the service the member had when the member previously terminated employment. To be eligible for any benefit, the member shall fulfill the membership service requirements for the benefit through membership service after again becoming a member, in addition to meeting any other eligibility requirement established for the benefit; provided that the membership service requirement shall be exclusive of any former service acquired in accordance with section 88-59 or any other section in part II, VII, or VIII;

- (2) If a former member with fewer than ten years of credited service and who did not withdraw the former member's accumulated contributions returns to service within four full calendar years after the year in which the former member left service, the former member shall again become a member in the same manner and under the same conditions as anyone first entering service, except that the member shall be credited with service credit for the service the member had when the member terminated employment:
 - (A) If the member returns to service as a class A or class B member, the member's new and previous accumulated contributions shall be combined; or
 - (B) If the member returns to service as a class H member, section 88-321(b) shall apply; and
- (3) If a former member with ten or more years of credited service who did not withdraw the former member's contributions returns to service, the former member's status shall be in accordance with the provisions described in section 88-97."

SECTION 4. Section 88-73, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Any member who:

- (1) Became a member before July 1, 2012, and has at least five years of credited service and [who] has attained age fifty-five [or any member who has];
- (2) Became a member before July 1, 2012, and has at least twenty-five years of credited service [or any member who has];
- (3) Has at least ten years of credited service, which includes service as a judge before July 1, 1999, an elective officer, or a legislative officer[;];
- (4) Becomes a member after June 30, 2012, and has at least ten years of credited service and has attained age sixty; or
- (5) Becomes a member after June 30, 2012, and has at least twenty-five years of credited service and has attained age fifty-five.

shall become eligible to receive a retirement allowance after the member has terminated service.

(b) Any member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, and who has at least five years of credited service and has attained age fifty-five or has at least twenty-five years of credited service shall become eligible to receive a retirement allowance after the member has terminated service. Any member who first earned credited service as a judge after June 30, 2012, and has at least ten years of credited service and has attained age sixty or has at least twenty-five years of credited service and has attained age fifty-five shall be eligible to receive a retirement allowance after the member has terminated service."

SECTION 5. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

"§88-74 Allowance on service retirement. (a) Upon retirement from service, a member shall receive a maximum retirement allowance as [~~follows~~] provided in this section.

[(+)] (b) If [the] a member, who became a member before July 1, 2012, has attained age fifty-five, [a] the member's maximum retirement allowance [ef] shall be two per cent of the member's average final compensation multiplied by

the total number of years of the member's credited service as a class A and class B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member, plus a retirement allowance of two per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class H member; provided that:

[(A)] (1) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;

[(B)] (2) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;

[(C)] (3) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;

[(D)] (4) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;

[(E)] (5) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer;

[(F)] (6) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety investigations staff investigator;

[(G)] (7) After June 30, 2002, if the member:

[(i)] (A) Has at least ten years of credited service as a firefighter;

[(ii)] (B) Is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician; and

[(iii)] (C) Continues employment in a class A or B position other than a firefighter; and

[(H)] (8) After June 30, 2004, if the member:

[(i)] (A) Has at least ten years of credited service as a police officer;

[(ii)] (B) Is deemed permanently medically disqualified due to a service related disability to be a police officer by the employer's physician; and

[(iii)] (C) Continues employment in a class A or B position other than a police officer;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection [(b)]; (e).

~~[(2)]~~ (c) If ~~[the]~~ a member, who became a member prior to July 1, 2012, has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

~~[(A)]~~ (1) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; ~~[and~~

~~[(B)]~~ (2) For a member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection ~~[(b); or]~~ (e);

~~[(C)]~~ (3) For a member who first earned credited service as a judge after June 30, 2012, for each year of credited service as a judge, three per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (1);

(4) For a judge with other credited service, as provided in ~~[paragraph (4)-]~~ subsection (b). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection ~~[(b); or]~~ (e); or

~~[(D)]~~ (5) For a judge with credited service as an elective officer or as a legislative officer, as provided in ~~[paragraph (3)-]~~ subsection (d).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in ~~[subparagraphs (A) and (B)]~~ paragraphs (1), (2), and (3) and the portion of the accumulated contributions specified in ~~[the subparagraphs]~~ paragraphs (1), (2), and (3) in excess of the requirements of the reduced annuity shall be returned to the member upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. The allowance for judges under this ~~[paragraph,]~~ subsection, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation~~[-or]~~.

~~[(3)]~~ (d) If ~~[the]~~ a member, who became a member before July 1, 2012, has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under ~~[subparagraphs (A), (B), (C), and (D)]~~ paragraphs (1), (2), (3), (4), (5), and (6) as follows:

~~[(A)]~~ Irrespective] (1) For a member who has credited service as an elective officer before July 1, 2012, irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(1), in addition to an annuity that is the actuarial

- equivalent of the member's accumulated contributions allocable to the period of service; ~~and~~
- (2) For a member who first earned credited service as an elective officer after June 30, 2012, irrespective of age, for each year of credited service as an elective officer, three per cent of the member's average final compensation as computed under section 88-81(e)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; ~~[(B) Irrespective]~~ (3) For a member who has credited service as a legislative officer before July 1, 2012, irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (4) For a member who first earned credited service as a legislative officer after June 30, 2012, irrespective of age, for each year of credited service as a legislative officer, three per cent of the member's average final compensation as computed under section 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; ~~[(C)]~~ (5) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
- ~~[(i)]~~ (A) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; ~~and~~
- (ii) (B) For a member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection ~~[(b)];~~ (e); and
- (C) For a member who first earned credited service as a judge after June 30, 2012, and has attained the age of sixty, for each year of credited service as a judge, three per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i); and
- ~~[(D)]~~ (6) For each year of credited service not included in ~~[subparagraph (A), (B), or (C)];~~ paragraph (1), (2), (3), (4), or (5), the average final compensation as computed under section 88-81(e)(4) shall be

multiplied by two per cent for credited service earned as a class A or class H member, two and one-half per cent for credited service earned as a class B member, and one and one-quarter per cent for credited service earned as a class C member. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection ~~[(b)-]~~ (e).

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(e)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under ~~[subparagraphs (A), (B), and (C)]~~ paragraphs 1, 2, 3, 4, and 5 and the portion of the accumulated contributions specified in these ~~[subparagraphs]~~ paragraphs in excess of the requirements of the reduced annuity shall be returned to the member upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this ~~[paragraph]~~ subsection shall supersede the formula contained in ~~[paragraph (2)-]~~ subsection (c).

~~[(b)]~~ (e) Except as provided in ~~[subsection (a)-]~~ subsections (b), (c), and (d), if a member, who became a member before July 1, 2012, has not attained age fifty-five at the date of retirement, the member's retirement allowance shall be reduced, for each month the member's age at the date of retirement is below age fifty-five, as follows:

- (1) 0.4166 per cent for each month below age fifty-five and above age forty-nine and eleven months; plus
- (2) 0.3333 per cent for each month below age fifty and above age forty-four and eleven months; plus
- (3) 0.2500 per cent for each month below age forty-five and above age thirty-nine and eleven months; plus
- (4) 0.1666 per cent for each month below age forty;

provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in these capacities.

(f) If a member, who becomes a member after June 30, 2012, has attained age sixty, the member's maximum retirement allowance shall be one and three-fourths per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and class B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member, plus a retirement allowance of one and three-fourths per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class H member; provided that:

- (1) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;

- (2) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
- (3) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
- (4) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
- (5) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer;
- (6) If the member has at least ten years of credited service, of which the last five or more years prior to retirement is credited service as a public safety investigations staff investigator;
- (7) If the member:
 - (A) Has at least ten years of credited service as a firefighter;
 - (B) Is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician; and
 - (C) Continues employment in a class A or class B position other than a firefighter; and
- (8) If the member:
 - (A) Has at least ten years of credited service as a police officer;
 - (B) Is deemed permanently medically disqualified due to a service related disability to be a police officer by the employer's physician; and
 - (C) Continues employment in a class A or class B position other than a police officer.

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-fourth per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i).

(g) If a member, who becomes a member after June 30, 2012, has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

- (1) For each year of credited service as a judge, three per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i);
- (2) For a judge with other credited service, as provided in subsection (f). If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i); and

- (3) For a judge with credited service as an elective officer or as a legislative officer, as provided in subsection (h).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in paragraph (1) and the portion of the accumulated contributions specified in paragraph (1) in excess of the requirements of the reduced annuity shall be returned to the member upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. The allowance for judges under this subsection, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation.

(h) If a member, who becomes a member after June 30, 2012, has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under paragraphs (1), (2), (3), and (4) as follows:

- (1) Irrespective of age, for each year of credited service as an elective officer, three per cent of the member's average final compensation as computed under section 88-81(f)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (2) Irrespective of age, for each year of credited service as a legislative officer, three per cent of the member's average final compensation as computed under section 88-81(f)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (3) For each year of credited service as a judge, three per cent of the member's average final compensation as computed under section 88-81(f)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i); and
- (4) For each year of credited service not included in paragraph (1), (2), or (3), the average final compensation as computed under section 88-81(f)(4) shall be multiplied by one and three-fourth per cent for credited service earned as a class A or class H member, two and one-fourth per cent for credited service earned as a class B member, and one and one-fourth per cent for credited service earned as a class C member. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i).

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(f) (1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under paragraphs (1), (2), and (3) and the portion of the accumulated contributions specified in these paragraphs in excess of the requirements of the reduced annuity shall be returned to the member upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this subsection shall supersede the formula contained in subsection (g).

(i) Except as provided in subsections (f), (g), and (h), if a member, who becomes a member after June 30, 2012, has not attained age sixty at the date of retirement, the member's retirement allowance shall be reduced, for each month the member's age at the date of retirement is below age sixty, as follows:

- (1) 0.4166 per cent for each month below age fifty-nine and above age fifty-four and eleven months; plus
- (2) 0.3333 per cent for each month below age fifty-five and above age forty-nine and eleven months; plus
- (3) 0.2500 per cent for each month below age fifty and above age forty-four and eleven months; plus
- (4) 0.1666 per cent for each month below age forty-five;

provided that no reduction shall be made if the member has attained the age of fifty-five and has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, water safety officer, or emergency medical technician, of which the last five or more years prior to retirement is credited service in these capacities."

SECTION 6. Section 88-74.6, Hawaii Revised Statutes, is amended to read as follows:

"§88-74.6 Unreduced allowance on service retirement; when applicable.

In addition to those positions identified in section [88-74(b)] 88-74(e) and notwithstanding any law in this part that requires a member to attain age fifty-five to qualify for an unreduced service retirement allowance, if [the] a member, who became a member before July 1, 2012, has at least [thirty]:

- (1) Thirty years of credited service through June 30, 2003; [~~twenty-nine~~]
- (2) Twenty-nine years of credited service on or after July 1, 2004; [~~twenty-eight~~]
- (3) Twenty-eight years of credited service on or after July 1, 2005; [~~twenty-seven~~]
- (4) Twenty-seven years of credited service on or after July 1, 2006; [~~twenty-six~~]
- (5) Twenty-six years of credited service on or after July 1, 2007; [~~and twenty-five~~] or
- (6) Twenty-five years of credited service on or after July 1, 2008,

as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, then upon retirement and irrespective of age, that member's service retirement allowance shall not be reduced for actuarial purposes."

SECTION 7. Section 88-76, Hawaii Revised Statutes, is amended to read as follows:

"§88-76 Allowance on ordinary disability retirement. Upon retirement for ordinary disability, a member shall receive a maximum retirement allowance of one and three-fourths per cent of the member's average final compensation for each year of credited service; except that for each year of credited service as a judge, an elective officer, or a legislative officer, the member shall receive a maximum retirement allowance computed as provided in section [88-74(a)(2) or (3);] 88-74(c), (d), (g), or (h), as applicable. The minimum retirement allowance

payable under this section shall be thirty per cent of the member's average final compensation."

SECTION 8. Section 88-81, Hawaii Revised Statutes, is amended to read as follows:

"§88-81 Average final compensation. (a) Average final compensation is the average annual compensation pay or salary upon which a member has made contributions as required by parts II, VII, and VIII of this chapter.

(b) The average final compensation of members shall be calculated as follows:

- (1) For employees who become members [~~prior to~~] before January 1, 1971:
 - (A) During the member's five highest paid years of credited service, including vacation pay, or the three highest paid years of credited service excluding vacation pay, whichever is greater; or
 - (B) If the member has [~~less~~] fewer than three years of credited service, during the member's actual years of credited service[-];
- (2) For employees who become members [~~on or after January 1, 1971;~~] after December 31, 1970, but before July 1, 2012:
 - (A) During the member's three highest paid years of credited service, excluding vacation pay; or
 - (B) If the member has [~~less~~] fewer than three years of credited service, during the member's actual years of credited service[-]; and
- (3) For employees who become members after June 30, 2012:
 - (A) During the member's five highest paid years of credited service, excluding vacation pay; or
 - (B) If the member has fewer than five years of credited service, during the member's actual years of credited service.

(c) In computing the compensation of a judge, the compensation paid to the judge by the United States as well as by the Territory shall be included.

(d) For service rendered as a member of the legislature from and after November 5, 1968, the actual annual salary of a member shall be the only amount used for determining the member's average final compensation. For service rendered as a member of the legislature prior to November 5, 1968, and after admission of this State into the Union, the annual compensation of a member shall be computed, for the purpose of determining the member's average final compensation, as follows: [~~during~~]

- (1) During a year in which a general session was held, it shall be deemed to have been an amount equal to four times the salary of a member of the legislature for a general session; and [~~during~~]
- (2) During a year in which a budget session was held, it shall be deemed to have been an amount equal to six times the salary of a member of the legislature for a budget session.

For service rendered as a member of the legislature prior to the admission of this State into the Union, the annual compensation of a member shall be deemed to have been four times the salary of a member of the legislature for a regular session for each year during the member's term of office.

(e) If a member, who became a member before July 1, 2012, has credited service rendered as an elective officer or as a legislative officer, the member's average final compensation shall be computed separately for each category of service as follows:

- (1) For the three highest paid years of credited service as an elective officer, or if the member has [less] fewer than three years of credited service in that capacity, then the member's actual years of credited service;
- (2) For the three highest paid years of credited service as a legislative officer, or if the member has [less] fewer than three years of credited service in that capacity, then the member's actual years of credited service;
- (3) For the three highest paid years of credited service as a judge, or if the member has [less] fewer than three years of credited service in that capacity, then the member's actual years of credited service; and
- (4) For the three highest paid years of credited service not included in paragraph (1), (2), or (3), or if the member has [less] fewer than three years of credited service in that capacity, then the member's actual years of credited service.

(f) If a member, who becomes a member after June 30, 2012, has credited service rendered as an elective officer or as a legislative officer, the member's average final compensation shall be computed separately for each category of service as follows:

- (1) For the five highest paid years of credited service as an elective officer, or if the member has fewer than five years of credited service in that capacity, then the member's actual years of credited service;
- (2) For the five highest paid years of credited service as a legislative officer, or if the member has fewer than five years of credited service in that capacity, then the member's actual years of credited service;
- (3) For the five highest paid years of credited service as a judge, or if the member has fewer than three years of credited service in that capacity, then the member's actual years of credited service; and
- (4) For the five highest paid years of credited service not included in paragraph (1), (2), or (3), or if the member has fewer than five years of credited service in that capacity, then the member's actual years of credited service."

SECTION 9. Section 88-90, Hawaii Revised Statutes, is amended to read as follows:

"§88-90 Post retirement allowances. (a) There shall be payable to each person receiving any pension, annuity or retirement allowance, a post retirement allowance which shall consist of an amount equivalent to one and one-half per cent of the monthly pension, annuity, or retirement allowance as originally computed, approved, and paid. This benefit shall be added to the monthly pension, annuity, or retirement allowance on the first day of July in each year following June 30, 1961, as follows:

- (1) To each person receiving a pension, annuity, or retirement allowance on June 30, 1961, payment of the benefit shall commence on July 1, 1961, except that after June 30, 1963, the monthly benefits payable under this subsection shall be computed and paid on the basis of the number of years that has elapsed since the person entitled thereto first became the recipient of the pension, annuity, or retirement allowance from which the benefit is derived[-]; and
- (2) To each person first receiving a pension, annuity, or retirement allowance after June 30, 1961, payment of the benefit shall commence

on the first of July following the calendar year in which the payment of the pension, annuity, or retirement allowance is effective.

(b) After June 30, 1970, the post retirement allowance shall consist of an amount equivalent to two and one-half per cent of the monthly pension, annuity, or retirement allowance as originally computed and paid. This benefit shall be payable on the first day of July in each year following June 30, 1970, as follows:

- (1) To each person, who on June 30, 1970, was receiving a post retirement allowance as described under subsection (a) hereof, payment of the benefit shall commence on July 1, 1970[-]; and
- (2) To each person first receiving a pension, annuity, or retirement allowance after December 31, 1968, payment of the benefit shall commence on the first day of July following the calendar year in which the payment of the pension, annuity, or retirement allowance is effective.

(c) Notwithstanding subsections (a) and (b), for employees who become members after June 30, 2012, and for any person who receives a monthly pension, annuity or retirement allowance as a beneficiary or survivor of the employee, the post retirement allowance shall consist of an amount equivalent to one and one half per cent of the monthly pension, annuity, or retirement allowance as originally computed and paid. Payment of the benefit shall commence on the first day of July following the calendar year in which the payment of the pension, annuity or retirement allowance is effective."

SECTION 10. Section 88-96, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Any member who ceases to be an employee and who became a member before July 1, 2012, and has fewer than five years of credited service, excluding unused sick leave, or who becomes a member after June 30, 2012, and has fewer than ten years of credited service, excluding sick leave, shall, upon application to the board, [shall] be paid all of the member's accumulated contributions and the member's membership shall thereupon terminate and all credited service shall be forfeited; provided that a member shall not be paid the member's accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board, the member has become an employee again.

Regular interest shall be credited to the former employee's account until the former employee's accumulated contributions are returned to the former employee; provided that the former employee's membership shall not continue after the fourth full year following the calendar year in which the individual's employment terminates. Upon termination of the former employee's membership, the former employee's credited service shall be forfeited and, if the former employee's accumulated contributions are \$1,000 or less at the time of distribution, the system shall return the former employee's contributions to the former employee. If the former employee does not become an employee again and if the former employee's accumulated contributions have not been withdrawn by the former employee or previously returned by the system to the former employee, the system shall return the former employee's accumulated contributions to the former employee as soon as possible after the former employee attains age sixty-two.

(b) Any member ~~[having five or more years of credited service]~~ who ceases to be an employee~~[;]~~ and who became a member before July 1, 2012, and has more than five years of credited service, excluding unused sick leave, or who becomes a member after June 30, 2012, and has more than ten years of credited service, excluding sick leave, shall, upon application to the board, ~~[shall]~~ be paid all of the member's accumulated contributions and thereupon the former employee's membership shall terminate and all credited service shall be forfeited; provided that a member shall not be paid the member's accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board, the member has become an employee again.

If the contributions are not withdrawn by the former employee within four calendar years following the calendar year in which the former employee's employment terminates, the former employee shall have established vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the former employee's retirement, payable in accordance with this chapter; provided that if the former employee withdraws the former employee's accumulated contributions, the former employee's vested benefit status shall terminate and all credited service shall be forfeited."

SECTION 11. Section 88-311, Hawaii Revised Statutes, is amended by amending the definition of "hypothetical account balance" to read as follows:

"Hypothetical account balance" means:

- (1) For members who became members before July 1, 2012, the sum of:
 - ~~[(+)]~~ ~~(A)~~ One and one-half times the sum of:
 - ~~[(A)]~~ (i) Employee contributions made, either by the member or on behalf of the member, pursuant to section 88-325; ~~[and~~
 - ~~(B)]~~ (ii) Accumulated interest at the regular interest rate on the employee contributions; and
 - ~~[(2)]~~ (B) Any employee contributions, including rollovers and contributions used to convert credited service to class H credited service, or used to purchase service, and accumulated interest on the employee contributions at the regular interest rate~~[-];~~ or
- (2) For members who become members after June 30, 2012, the sum of:
 - (A) One and one-fifth times the sum of:
 - (i) Employee contributions made, either by the member or on behalf of the member, pursuant to section 88-325; and
 - (ii) Accumulated interest at the regular interest rate on the employee contributions; and
 - (B) Any employee contributions, including rollovers and contributions used to convert credited service to class H credited service, or used to purchase service, and accumulated interest on the employee contributions at the regular interest rate."

SECTION 12. Section 88-325, Hawaii Revised Statutes, is amended to read as follows:

~~“§88-325”~~ **Employee contributions.** (a) Each class H member, who became a member before July 1, 2012, shall contribute six per cent of the member’s compensation to the annuity savings fund; provided that each sewer worker, water safety officer, and emergency medical technician who became a member before July 1, 2012, and is a class H member shall contribute nine and [seventy-five one-hundredths] three-fourths per cent of the member’s compensation to the annuity savings fund for service in that capacity.

(b) Each class H member, who becomes a member after June 30, 2012, shall contribute eight per cent of the member’s compensation to the annuity savings fund; provided that each sewer worker, water safety officer, and emergency medical technician who becomes a member after June 30, 2012, and is a class H member shall contribute eleven and three-fourths per cent of the member’s compensation to the annuity savings fund for service in that capacity.”

SECTION 13. Section 88-331, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) A class H member who:

- (1) Became a member before July 1, 2012, has at least five years of credited service, and has attained age sixty-two[~~], or a class H member with];~~
- (2) Became a member before July 1, 2012, has at least thirty years of credited service [who], and has attained the age of fifty-five; or
- (3) Becomes a member after June 30, 2012, has at least ten years of credited service, and has attained age sixty-five; or
- (4) Becomes a member after June 30, 2012, has at least thirty years of credited service, and has attained age sixty.

shall become eligible to receive a retirement allowance after the member has terminated service.

(b) A class H member who became a member before July 1, 2012, and has at least twenty-five years of credited service as a sewer worker or water safety officer, of which the last five or more years prior to retirement is credited service in that capacity, shall become eligible to receive a retirement allowance unreduced for age after the member has terminated service. A class H member who becomes a member after June 30, 2012, and has at least twenty-five years of credited service as a sewer worker or water safety officer, of which the last five or more years prior to retirement is credited service in that capacity, and has attained age fifty-five shall become eligible to receive a retirement allowance unreduced for age after the member has terminated service.”

2. By amending subsection (d) to read:

“(d) If a class H member, who became a member before July 1, 2012, has at least twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, the member shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service. If a class H member, who becomes a member after June 30, 2012, has at least twenty-five years of credited service as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, and has attained age fifty-five, the member shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.”

SECTION 14. Section 88-332, Hawaii Revised Statutes, is amended to read as follows:

“§88-332 Service retirement allowance. (a) Upon retirement from service, a class H member who became a member before July 1, 2012, shall receive a maximum retirement allowance as follows:

- (1) If the member has met the requirements in section 88-331(a), (b), or (d), a maximum retirement allowance of two per cent of the average final compensation multiplied by the number of years of class H credited service, plus a retirement allowance at the rate of one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service; or
- (2) If the member has met the requirements in section 88-331(c), an early retirement allowance equal to the maximum retirement allowance calculated as provided in paragraph (1), reduced by 0.4166 per cent for each month the member is less than age sixty-two at retirement.

(b) Upon retirement from service, a class H member who becomes a member after June 30, 2012, shall receive a maximum retirement allowance as follows:

- (1) If the member has met the requirements in section 88-331(a), (b), or (d), a maximum retirement allowance of one and three-fourths per cent of the average final compensation multiplied by the number of years of class H credited service, plus a retirement allowance at the rate of one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service; or
- (2) If the member has met the requirements in section 88-331(c), an early retirement allowance equal to the maximum retirement allowance calculated as provided in paragraph (1), reduced by 0.4166 per cent for each month the member is less than age sixty-five at retirement.”

SECTION 15. Section 88-341, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any class H member who ceases to be an employee and who became a member before July 1, 2012, and has fewer than five years of credited service, excluding unused sick leave, or who becomes a member after June 30, 2012, and has fewer than ten years of credited service, excluding unused sick leave, shall, upon application to the board, be paid all of the former employee's accumulated contributions, and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that an individual shall not be paid the individual's accumulated contributions if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for return of accumulated contributions is received by the board, the individual has become an employee again.

Regular interest shall be credited to the former employee's account until the former employee's accumulated contributions are withdrawn; provided that the former employee's membership shall not continue after the fourth full year following the calendar year in which the individual's employment terminates. If the former employee does not become an employee again and has not withdrawn the former employee's accumulated contributions, the system shall return the

former employee's accumulated contributions to the former employee as soon as possible after the former employee attains age sixty-two.

(b) Any class H member ~~[having five or more years of credited service]~~ who ceases to be an employee~~[,]~~ and who became a member before July 1, 2012, and has more than five years of credited service, excluding unused sick leave, or who becomes a member after June 30, 2012, and has more than ten years of credited service, excluding sick leave, shall, upon application to the board, ~~[shall]~~ be paid an amount equal to the former employee's hypothetical account balance and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that the individual shall not be paid the individual's hypothetical account balance if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for payment of the individual's hypothetical account balance is received by the board, the individual has become an employee again.

If the contributions are not withdrawn by the former employee after the individual's employment terminates, the former employee shall have vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the former employee's retirement, payable in accordance with this chapter."

PART II

SECTION 16. Section 88-122, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Commencing with fiscal year 2005-2006 and each subsequent fiscal year, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on fifteen and three-fourths per cent of the member's compensation for police officers, firefighters, and corrections officers and thirteen and three-fourths per cent of the member's compensation for all other employees. Commencing with fiscal year 2008-2009 and each subsequent fiscal year~~[,]~~ until fiscal year 2011-2012, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on nineteen and seven-tenths per cent of the member's compensation for police officers, firefighters, and corrections officers and fifteen per cent of the member's compensation for all other employees. In fiscal year 2012-2013, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-two per cent of the member's compensation for police officers, firefighters, and corrections officers and fifteen and one-half per cent of the member's compensation for all other employees. In fiscal year 2013-2014, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-three per cent of the member's compensation for police officers, firefighters, and corrections officers and sixteen per cent of the member's compensation for all other employees. In fiscal year 2014-2015, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-four per cent of the member's compensation for police officers, firefighters, and corrections officers and sixteen and one-half per cent of the member's compensation for all other employees. Commencing with fiscal year 2015-2016 and each subsequent fiscal year, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-five per cent of the member's compensa-

tion for police officers, firefighters, and corrections officers and seventeen per cent of the member's compensation for all other employees. The contribution rates shall amortize the total unfunded accrued liability of the entire plan over a period not to exceed thirty years. ~~[Effective January 2, 2008 until January 2, 2011, there shall be no benefit enhancements under this chapter for any group of members, including any reduction of retirement age, when there is an unfunded accrued liability.]~~

The contribution rates shall be subject to adjustment:

- (1) If the actual period required to amortize the unfunded accrued liability exceeds thirty years;
- (2) If there is no unfunded accrued liability; or
- (3) Based on the actuarial investigation conducted in accordance with section 88-105."

PART III

SECTION 17. The purpose of this part is to address the employees' retirement system of the State of Hawaii.

More specifically, this part reduces the percentage of regular interest to be credited to a new public employees' retirement account. The legislature finds that a reduced percentage established pursuant to this part is comparable to interest on savings accounts, certificates of deposit, and other similar investment vehicles. The legislature further finds that this part is necessary to control the public employees' contributions to the employees' retirement system.

This part includes a study to be conducted in the future by the board of trustees of the system on the appropriateness of the new regular interest rate. Based on the study, the board shall recommend changing the rate or keeping it the same.

SECTION 18. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of "regular interest" to read:

"Regular interest":

- (1) For a member who became a member before July 1, 2011, interest at four and one-half per cent a year, compounded annually[-]; and
- (2) For a member who becomes a member after June 30, 2011, interest at two per cent a year, compounded annually."

SECTION 19. Section 88-132, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) If the State or county, as the case may be, fails to pay the contributions within the time specified in subsection (c), the State or county, as the case may be, shall also pay to the system regular interest ~~[at the rate of four and one-half per cent a year compounded annually]~~ from the date the member returned to state or county government service or the date of the member's death in the performance of the member's military duty until payment is made. ~~[Interest]~~ Regular interest paid on the portion of the contributions that would have been payable by the member shall be included in the member's accumulated contributions."

SECTION 20. Commencing on January 1, 2020, the board of trustees of the employees' retirement system shall conduct a study to determine whether the percentage of regular interest, as defined under section 88-21, Hawaii Revised Statutes, is appropriate. The board shall compare that percentage against the guaranteed percentage of interest paid by other investment or saving vehicles

during the fiscal year 2019-2020. The board shall submit a report of the study to the legislature that shall include a recommendation on whether the percentage of "regular interest" should be changed or remain the same. The board shall submit the report not less than twenty days prior to the convening of the regular session of 2021.

PART IV

SECTION 21. Section 88-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) At least once in each five-year period, commencing with fiscal year 1994-1995, the actuary shall make an actuarial investigation of the experience of the system and shall recommend to the board of trustees the adoption for actuarial valuation of the system of mortality, service, and other assumptions, factors, and tables as shall be deemed appropriate and necessary [~~and the actuary shall recommend to the legislature for its adoption the investment yield rate~~]. The actuary shall further recommend the acceptable funded ratio for the system, taking into consideration the guaranties of article XVI, section 2 of the state constitution, section 88-107, and section 88-127."

SECTION 22. Section 88-122, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The actuarial valuations [~~made for years after June 30, 1999,~~] shall be based on [~~an eight per cent investment yield rate, salary increase assumptions adopted by the board on the recommendation of the actuary described under section 88-30, and~~] the contribution rates approved by the legislature, and the tables, [~~contribution rates,~~] assumptions, and factors adopted by the board [~~or legislature~~] for actuarial valuations of the system [~~, subject to recommendations made by the actuary appointed under section 88-29,~~] provided that the investment yield rate assumption for the year ending June 30, 2011, shall be seven and three-quarters per cent."

PART V

SECTION 23. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 24. This Act shall take effect on July 1, 2011; provided that part IV shall take effect on June 30, 2011.

(Approved June 23, 2011.)

ACT 164

H.B. NO. 200

A Bill for an Act Relating to the State Budget.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. SHORT TITLE. This Act shall be known and may be cited as the General Appropriations Act of 2011.

SECTION 2. DEFINITIONS. Unless otherwise clear from the context, as used in this Act:

- (a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.
- (b) "Expending agency" means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the legislature, office of Hawaiian affairs, and judiciary), the political subdivisions of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act.

Abbreviations where used to denote the expending agency shall mean the following:

AGR	Department of Agriculture
AGS	Department of Accounting and General Services
ATG	Department of the Attorney General
BED	Department of Business, Economic Development and Tourism
BUF	Department of Budget and Finance
CCA	Department of Commerce and Consumer Affairs
DEF	Department of Defense
EDN	Department of Education
GOV	Office of the Governor
HHL	Department of Hawaiian Home Lands
HMS	Department of Human Services
HRD	Department of Human Resources Development
HTH	Department of Health
LBR	Department of Labor and Industrial Relations
LNR	Department of Land and Natural Resources
LTG	Office of the Lieutenant Governor
PSD	Department of Public Safety
SUB	Subsidies
TAX	Department of Taxation
TRN	Department of Transportation
UOH	University of Hawaii
CCH	City and County of Honolulu
COH	County of Hawaii
COK	County of Kauai
COM	County of Maui

- (c) "Means of financing" (or "MOF") means the source from which funds are appropriated or authorized to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

A	general funds
B	special funds
C	general obligation bond fund
D	general obligation bond fund with debt service cost to be paid from special funds
E	revenue bond funds
J	federal aid interstate funds
K	federal aid primary funds
L	federal aid secondary funds
M	federal aid urban funds
N	other federal funds
R	private contributions
S	county funds

- T trust funds
- U interdepartmental transfers
- V federal stimulus funds
- W revolving funds
- X other funds

- (d) "Position ceiling" means the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods, as denoted by an asterisk.
- (e) "Capital project number" means the official number of the capital project, as assigned by the responsible organization.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2011, and ending June 30, 2013. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each fiscal year, except as provided elsewhere in this Act, or as provided by general law.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
A. ECONOMIC DEVELOPMENT					
1.	BED100 - STRATEGIC MARKETING AND SUPPORT				
	OPERATING		BED	12.00 * 1,177,828 A	10.00 * 921,828 A
			BED	*	2.00 *
			BED	B	362,800 B
			BED	148,718 N	148,718 N
			BED	250,000 V	V
			BED	1,821,915 W	1,821,915 W
2.	BED105 - CREATIVE INDUSTRIES DIVISION				
	OPERATING		BED	8.00 * 813,704 A	8.00 * 841,454 A
3.	BED107 - FOREIGN TRADE ZONE				
	OPERATING		BED	17.00 * 2,066,145 B	17.00 * 2,066,145 B
	INVESTMENT CAPITAL		BED	4,500,000 D	D
			BED	3,000,000 N	N
4.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT				
	OPERATING		BED	21.00 * 1,536,061 A	21.00 * 1,536,061 A
5.	BED113 - TOURISM				
	OPERATING		BED	6.00 * 141,162,298 B	6.00 * 141,162,298 B
6.	AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE				
	OPERATING		AGR	9.00 * 1,089,967 B	9.00 * 1,089,967 B
			AGR	5,000,000 W	5,000,000 W

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
7.	AGR122	PLANT, PEST, AND DISEASE CONTROL			
	OPERATING		AGR	50.00* 3,341,420 A 62.00* 10,515,874 B 753,383 N 512,962 T 9.00* 1,029,791 U 50,360 W	50.00* 3,341,420 A 62.00* 10,515,874 B 753,383 N 512,962 T 9.00* 1,029,791 U 50,360 W
8.	AGR131	RABIES QUARANTINE			
	OPERATING		AGR	36.32* 3,281,623 B	36.32* 3,281,623 B
9.	AGR132	ANIMAL DISEASE CONTROL			
	OPERATING		AGR	13.68* 971,700 A 377,518 N 473,224 U	13.68* 971,700 A 377,518 N 473,224 U
10.	LNR172	FORESTRY - RESOURCE MANAGEMENT AND DEVELOPMENT			
	OPERATING		LNR	15.00* 553,023 A 1.50* 3,909,996 B 1.50* 992,847 N	15.00* 553,023 A 1.50* 3,637,996 B 1.50* 992,847 N
11.	AGR151	QUALITY AND PRICE ASSURANCE			
	OPERATING		AGR	16.00* 1,093,246 A 1.00* 204,885 B 77,424 N 300,000 T 570,353 W	16.00* 1,093,246 A 1.00* 204,885 B 77,424 N 300,000 T 502,553 W
12.	AGR171	AGRICULTURAL DEVELOPMENT AND MARKETING			
	OPERATING		AGR	12.00* 995,183 A 20,000 B 184,500 N	12.00* 995,183 A 20,000 B 184,500 N
13.	AGR141	AGRICULTURAL RESOURCE MANAGEMENT			
	OPERATING		AGR	1.00* 543,814 A 9.00* 1,925,210 B 13.00* 1,488,383 W	1.00* 543,814 A 9.00* 1,925,210 B 13.00* 1,488,383 W
	INVESTMENT CAPITAL		AGR	12,710,000 C 7,050,000 N	11,900,000 C 8,350,000 N
14.	AGR161	AGRIBUSINESS DEVELOPMENT AND RESEARCH			
	OPERATING		AGR	50,601 A 500,000 B 3,452,371 W 750,000 C	50,601 A 500,000 B 3,397,691 W C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
15.	AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE				
	OPERATING		AGR	20.00* 1,448,696 A 4.00*	20.00* 1,448,696 A 4.00*
	INVESTMENT CAPITAL		AGR	272,350 B 750,000 C	272,350 B 500,000 C
16.	LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT				
	OPERATING		LNR	6.00* 581,020 A 303,474 B 1.00*	6.00* 581,020 A 303,474 B 1.00*
	INVESTMENT CAPITAL		LNR	750,305 N 50,000 C	750,305 N 320,000 C
17.	AGR153 - AQUACULTURE DEVELOPMENT PROGRAM				
	OPERATING		AGR	4.00* 310,405 A 60,000 B 46,134 N	4.00* 310,405 A 60,000 B 46,134 N
18.	BED120 - PROGRAM ON ENVIRONMENT AND ENERGY DEVELOPMENT				
	OPERATING		BED	3.00* 305,176 A 5.00* 4,085,300 B 5.00* 4,952,266 N 6,083,138 V	3.00* 305,176 A 5.00* 4,285,300 B 5.00* 4,952,266 N 59,468 V
19.	BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION				
	OPERATING		BED	1.50* 1,049,658 A 1.50* 3,755,410 B 5,521,710 N 1,500,000 W 734,000 B	1.50* 1,049,658 A 1.50* 3,755,410 B 5,521,710 N 1,500,000 W B
20.	BED145 - HAWAII STRATEGIC DEVELOPMENT CORPORATION				
	OPERATING		BED	2,608,516 B 4,218,756 W	2,608,516 B 4,218,756 W
21.	BED146 - NATURAL ENERGY LAB OF HAWAII AUTHORITY				
	OPERATING		BED	7,672,917 B 9,926,408 N 3,500,000 C	7,672,917 B 9,926,408 N C
22.	LNR141 - WATER AND LAND DEVELOPMENT				
	OPERATING		LNR	2.00* 250,828 A 2.00* 325,168 B 188,181 W	2.00* 250,828 A 2.00* 325,168 B 188,181 W
	INVESTMENT CAPITAL		LNR	3,740,000 C	2,500,000 C
23.	BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY				
	OPERATING		BED	2.00* 1,086,818 W	2.00* 1,086,818 W
	INVESTMENT CAPITAL		BED	1,855,000 C	1,855,000 C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
24.	BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORP				
	OPERATING		BED	9,677,735 N	9,677,735 N
			BED	21,923,698 T	21,923,698 T
				31.00 *	31.00 *
	INVESTMENT CAPITAL		BED	6,874,086 W	6,874,086 W
			BED	43,000,000 C	5,000,000 C
25.	BED128 - OFFICE OF AEROSPACE OPERATING		BED	78,984 A	78,984 A
B. EMPLOYMENT					
1.	LBR111 - WORKFORCE DEVELOPMENT PROGRAM				
	OPERATING		LBR	0.20 *	0.20 *
			LBR	101,259 A	101,259 A
			LBR	5,940,010 B	5,940,010 B
				116.80 *	116.80 *
			LBR	50,768,891 N	50,768,891 N
			LBR	1,505,580 U	1,505,580 U
2.	LBR135 - WORKFORCE DEVELOPMENT COUNCIL				
	OPERATING		LBR	1.00 *	1.00 *
			LBR	11,577 A	11,577 A
			LBR	492,261 N	492,261 N
3.	LBR171 - UNEMPLOYMENT INSURANCE PROGRAM				
	OPERATING		LBR	623,391,310 B	361,191,310 B
				243.50 *	243.50 *
			LBR	18,152,181 N	18,152,181 N
4.	LBR903 - OFFICE OF COMMUNITY SERVICES				
	OPERATING		LBR	2.00 *	2.00 *
			LBR	1,841,633 A	1,841,633 A
				2.00 *	2.00 *
			LBR	5,882,044 N	5,882,044 N
	INVESTMENT CAPITAL		LBR	1,200,000 U	1,200,000 U
			LBR	8,310,000 C	C
5.	LBR905 - HI CAREER (KOKUA) INFORMATION DELIVERY SYS				
	OPERATING		LBR	204,513 A	204,513 A
			LBR	143,372 N	143,372 N
6.	HMS802 - VOCATIONAL REHABILITATION				
	OPERATING		HMS	23.41 *	23.41 *
			HMS	3,516,863 A	3,516,863 A
				81.09 *	81.09 *
			HMS	13,440,880 N	13,440,880 N
	INVESTMENT CAPITAL		HMS	1,330,200 W	1,330,200 W
			HMS	497,000 C	C
7.	LBR143 - HAWAII OCCUPATIONAL SAFETY AND HEALTH PROGRAM				
	OPERATING		LBR	26.50 *	26.50 *
			LBR	1,498,757 A	1,498,757 A
				16.50 *	16.50 *
			LBR	1,830,524 N	1,830,524 N
			LBR	70,000 W	70,000 W
8.	LBR152 - WAGE STANDARDS PROGRAM				
	OPERATING		LBR	18.00 *	18.00 *
			LBR	1,051,219 A	1,051,219 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
9.	LBR153 - HAWAII CIVIL RIGHTS COMMISSION				
	OPERATING		LBR	17.50* 1,111,480 A	17.50* 1,111,480 A
			LBR	4.50* 600,287 N	4.50* 600,287 N
10.	LBR183 - DISABILITY COMPENSATION PROGRAM				
	OPERATING		LBR	81.00* 4,237,423 A	81.00* 4,237,423 A
			LBR	8.00* 23,791,406 B	8.00* 23,791,406 B
11.	LBR316 - OFFICE OF LANGUAGE ACCESS				
	OPERATING		LBR	3.00* 312,228 A	3.00* 312,228 A
12.	LBR161 - HAWAII LABOR RELATIONS BOARD				
	OPERATING		LBR	1.00* 568,548 A	1.00* 568,548 A
13.	LBR812 - LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD				
	OPERATING		LBR	9.00* 782,657 A	9.00* 782,657 A
14.	LBR871 - EMPLOYMENT SECURITY APPEALS REFEREES' OFFICE				
	OPERATING		LBR	10.80* 809,372 N	10.80* 809,372 N
15.	LBR901 - DATA GATHERING, RESEARCH, AND ANALYSIS				
	OPERATING		LBR	4.38* 303,933 A	4.38* 303,933 A
			LBR	27.62* 2,418,373 N	27.62* 2,418,373 N
16.	LBR902 - GENERAL ADMINISTRATION				
	OPERATING		LBR	19.52* 1,247,936 A	19.52* 1,247,936 A
			LBR	27.06* 2,763,168 N	27.06* 2,763,168 N

C. TRANSPORTATION FACILITIES

1.	TRN102 - HONOLULU INTERNATIONAL AIRPORT				
	OPERATING		TRN	586.50* 116,915,768 B	586.50* 116,915,768 B
			TRN	1,000,000 N	1,000,000 N
	INVESTMENT CAPITAL		TRN	20,287,000 E	27,188,000 E
			TRN	40,725,000 N	44,512,000 N
			TRN	6,400,000 X	16,000,000 X
2.	TRN104 - GENERAL AVIATION				
	OPERATING		TRN	30.00* 5,946,642 B	30.00* 5,946,642 B
			TRN	330,000 N	N
	INVESTMENT CAPITAL		TRN	2,375,000 B	775,000 B
			TRN	7,750,000 N	7,750,000 N
3.	TRN111 - HILO INTERNATIONAL AIRPORT				
	OPERATING		TRN	82.00* 13,435,989 B	82.00* 13,430,989 B

PROGRAM APPROPRIATIONS

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				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		INVESTMENT CAPITAL	TRN	2,375,000 N	1,000,000 N
			TRN	2,500,000 B	B
			TRN	14,000,000 E	900,000 E
			TRN	N	8,550,000 N
4.	TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE			85.00 *	85.00 *
	OPERATING		TRN	15,506,905 B	15,513,450 B
			TRN	475,000 N	1,000,000 N
5.	TRN116 - WAIMEA-KOHALA AIRPORT			6.00 *	6.00 *
	OPERATING		TRN	873,712 B	867,167 B
			TRN	283,000 N	500,000 N
6.	TRN118 - UPOLU AIRPORT				
	OPERATING		TRN	239,500 B	239,500 B
			TRN	249,000 N	500,000 N
7.	TRN131 - KAHULUI AIRPORT			151.00 *	151.00 *
	OPERATING		TRN	23,636,119 B	23,631,119 B
			TRN	1,000,000 N	1,000,000 N
	INVESTMENT CAPITAL		TRN	1,500,000 B	B
			TRN	18,995,000 E	6,000,000 E
			TRN	11,625,000 N	N
8.	TRN133 - HANA AIRPORT			9.00 *	9.00 *
	OPERATING		TRN	696,912 B	696,912 B
			TRN	373,500 N	N
9.	TRN135 - KAPALUA AIRPORT			11.00 *	11.00 *
	OPERATING		TRN	1,846,635 B	1,846,635 B
	INVESTMENT CAPITAL		TRN	E	113,000 E
10.	TRN141 - MOLOKAI AIRPORT			13.00 *	13.00 *
	OPERATING		TRN	2,262,129 B	2,262,129 B
			TRN	3,325,000 N	1,000,000 N
11.	TRN143 - KALAUPAPA AIRPORT			9.00 *	9.00 *
	OPERATING		TRN	780,691 B	730,691 B
			TRN	350,000 N	N
12.	TRN151 - LANAI AIRPORT			10.00 *	10.00 *
	OPERATING		TRN	1,982,364 B	2,462,364 B
			TRN	950,000 N	1,000,000 N
	INVESTMENT CAPITAL		TRN	2,825,000 B	B
			TRN	32,286,000 N	N
13.	TRN161 - LIHUE AIRPORT			101.00 *	101.00 *
	OPERATING		TRN	14,751,779 B	14,751,779 B
			TRN	475,000 N	1,000,000 N
	INVESTMENT CAPITAL		TRN	5,700,000 E	9,380,000 E
			TRN	N	20,520,000 N

PROGRAM APPROPRIATIONS

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				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
14.	TRN163 - PORT ALLEN AIRPORT	OPERATING	TRN	19,841 B	26,841 B
			TRN	340,000 N	N
15.	TRN195 - AIRPORTS ADMINISTRATION			111.00*	111.00*
		OPERATING	TRN	124,510,416 B	141,124,063 B
		INVESTMENT CAPITAL	TRN	11,450,000 B	12,850,000 B
			TRN	7,500,000 N	7,500,000 N
			TRN	100,000 X	100,000 X
16.	TRN301 - HONOLULU HARBOR			116.00*	116.00*
		OPERATING	TRN	24,115,612 B	24,115,612 B
17.	TRN303 - KALAELOA BARBERS POINT HARBOR			3.00*	3.00*
		OPERATING	TRN	2,104,534 B	2,104,534 B
18.	TRN311 - HILO HARBOR			14.00*	14.00*
		OPERATING	TRN	2,375,457 B	2,375,457 B
		INVESTMENT CAPITAL	TRN	750,000 B	B
19.	TRN313 - KAWAIHAE HARBOR			2.00*	2.00*
		OPERATING	TRN	1,234,031 B	1,234,031 B
20.	TRN331 - KAHULUI HARBOR			18.00*	18.00*
		OPERATING	TRN	3,427,632 B	3,427,632 B
		INVESTMENT CAPITAL	TRN	48,400,000 E	E
21.	TRN341 - KAUNAKAKAI HARBOR			1.00*	1.00*
		OPERATING	TRN	606,144 B	606,144 B
22.	TRN361 - NAWILIWILI HARBOR			15.00*	15.00*
		OPERATING	TRN	2,807,157 B	2,807,157 B
23.	TRN363 - PORT ALLEN HARBOR			1.00*	1.00*
		OPERATING	TRN	393,619 B	393,619 B
24.	TRN351 - KAUMALAPAU HARBOR				
		OPERATING	TRN	259,837 B	259,837 B
25.	TRN395 - HARBORS ADMINISTRATION			71.00*	71.00*
		OPERATING	TRN	53,223,480 B	53,252,339 B
		INVESTMENT CAPITAL	TRN	7,502,000 B	3,500,000 B
			TRN	9,235,000 E	1,735,000 E
			TRN	4,003,000 N	N
26.	TRN333 - HANA HARBOR				
		OPERATING	TRN	42,519 B	42,519 B
27.	TRN501 - OAHU HIGHWAYS			225.00*	225.00*
		OPERATING	TRN	82,971,062 B	98,714,062 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
			TRN	2,200,000 N	2,200,000 N
		INVESTMENT CAPITAL	TRN	24,193,000 E	5,534,000 E
			TRN	45,947,000 N	11,554,000 N
28.	TRN511 - HAWAII HIGHWAYS			124.00*	124.00*
		OPERATING	TRN	22,557,598 B	29,557,598 B
		INVESTMENT CAPITAL	TRN	12,195,000 E	2,040,000 E
			TRN	22,380,000 N	8,160,000 N
29.	TRN531 - MAUI HIGHWAYS			81.00*	81.00*
		OPERATING	TRN	22,588,385 B	30,970,902 B
		INVESTMENT CAPITAL	TRN	24,292,000 E	5,740,000 E
			TRN	19,720,000 N	8,260,000 N
			TRN	1,500,000 S	S
30.	TRN561 - KAUAI HIGHWAYS			51.00*	51.00*
		OPERATING	TRN	13,283,171 B	18,283,171 B
		INVESTMENT CAPITAL	TRN	23,510,000 E	14,290,000 E
			TRN	23,120,000 N	15,160,000 N
			TRN	4,500,000 S	S
31.	TRN595 - HIGHWAYS ADMINISTRATION			83.00*	83.00*
		OPERATING	TRN	79,904,352 B	78,549,288 B
		INVESTMENT CAPITAL	TRN	1,757,957 N	1,757,957 N
			TRN	12,000,000 B	12,000,000 B
			TRN	20,760,000 E	21,740,000 E
			TRN	17,740,000 N	38,160,000 N
32.	TRN597 - HIGHWAY SAFETY			33.00*	33.00*
		OPERATING	TRN	6,847,705 B	6,847,705 B
				7.00*	7.00*
			TRN	5,945,280 N	5,945,280 N
33.	TRN995 - GENERAL ADMINISTRATION			104.00*	104.00*
		OPERATING	TRN	14,946,700 B	14,946,700 B
			TRN	33,322,783 N	33,322,783 N
			TRN	423,067 R	423,067 R
D. ENVIRONMENTAL PROTECTION					
1.	HTH840 - ENVIRONMENTAL MANAGEMENT			36.00*	36.00*
		OPERATING	HTH	2,604,474 A	2,604,474 A
				60.00*	60.00*
			HTH	80,627,387 B	80,627,387 B
				44.80*	44.80*
			HTH	9,167,057 N	9,167,057 N
				56.20*	56.20*
		INVESTMENT CAPITAL	HTH	164,949,186 W	164,945,186 W
			HTH	5,872,000 C	5,872,000 C
			HTH	29,354,000 N	29,354,000 N
2.	AGR846 - PESTICIDES			8.00*	8.00*

PROGRAM APPROPRIATIONS

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				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
	OPERATING		AGR	496,810 A 2.00*	496,810 A 2.00*
			AGR	475,561 N 8.00*	475,561 N 8.00*
			AGR	1,101,976 W	1,101,976 W
3.	LNR401 - AQUATIC RESOURCES			27.00*	27.00*
	OPERATING		LNR	2,384,172 A 1.00*	2,384,172 A 1.00*
			LNR	3,478,709 N	3,478,709 N
	INVESTMENT CAPITAL		LNR	1,000,000 C	C
4.	LNR402 - NATIVE RESOURCES AND FIRE PROTECTION PROGRAM			49.50*	49.50*
	OPERATING		LNR	3,722,025 A 3,470,749 B 6.50*	3,722,025 A 3,405,749 B 6.50*
			LNR	5,151,190 N	5,148,690 N
	INVESTMENT CAPITAL		LNR	1,180,000 C	2,500,000 C
5.	LNR404 - WATER RESOURCES			19.00*	19.00*
	OPERATING		LNR	2,335,185 A 3.00*	2,335,185 A 3.00*
			LNR	426,818 B	426,818 B
6.	LNR405 - CONSERVATION AND RESOURCES ENFORCEMENT			114.25*	114.25*
	OPERATING		LNR	6,644,604 A 18.00*	6,644,604 A 18.00*
			LNR	1,626,083 B 1.75*	1,626,083 B 1.75*
			LNR	768,114 N 1.00*	768,114 N 1.00*
	INVESTMENT CAPITAL		LNR	108,114 W 280,000 C	108,114 W 120,000 C
7.	LNR407 - NATURAL AREA RESERVES AND WATERSHED MANAGEMENT			19.00*	19.00*
	OPERATING		LNR	812,151 A 5.50*	812,151 A 5.50*
			LNR	7,660,731 B 0.50*	7,195,731 B 0.50*
			LNR	1,638,030 N	1,638,030 N
8.	HTH850 - OFFICE OF ENVIRONMENTAL QUALITY CONTROL			5.00*	5.00*
	OPERATING		HTH	344,488 A	344,488 A
9.	LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT			31.00*	31.00*
	OPERATING		LNR	2,340,578 A 11.00*	1,865,578 A 11.00*
			LNR	986,801 B	986,801 B
	INVESTMENT CAPITAL		LNR	10,340,000 C	2,540,000 C
10.	HTH849 - ENVIRONMENTAL HEALTH ADMINISTRATION			10.00*	10.00*
	OPERATING		HTH	893,616 A 0.50*	893,616 A 0.50*

PROGRAM APPROPRIATIONS

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				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
			HTH	48,271 B 14.50*	48,271 B 14.50*
			HTH	3,201,314 N 14.00*	3,201,314 N 14.00*
			HTH	3,315,298 W	3,315,298 W
E. HEALTH					
1.	HTH100 - COMMUNICABLE DISEASE SERVICES			99.00*	99.00*
	OPERATING		HTH	13,388,725 A 16.50*	13,388,725 A 16.50*
			HTH	8,407,452 N	8,407,452 N
2.	HTH131 - DISEASE OUTBREAK CONTROL			20.60*	20.60*
	OPERATING		HTH	1,613,768 A 34.40*	1,613,768 A 34.40*
			HTH	10,473,680 N	10,473,680 N
3.	HTH141 - GENERAL MEDICAL AND PREVENTIVE SERVICES			166.87*	166.87*
	OPERATING		HTH	12,480,474 A 90,720 B 131,746 U	12,480,474 A 90,720 B 131,746 U
4.	HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM			13.00*	13.00*
	OPERATING		HTH	56,691,251 A 20,072,874 B 3.00*	56,691,251 A 20,072,874 B 3.00*
			HTH	3,807,055 N	3,814,055 N
5.	HTH560 - FAMILY HEALTH			108.00*	108.00*
	OPERATING		HTH	23,985,044 A 13.50*	23,985,044 A 13.50*
			HTH	13,955,451 B 181.50*	13,955,451 B 181.50*
			HTH	49,038,560 N 0.50*	49,038,560 N 0.50*
			HTH	1,868,031 U	1,868,031 U
6.	HTH590 - TOBACCO SETTLEMENT			1.00*	1.00*
	OPERATING		HTH	64,114 A 38.00*	64,114 A 38.00*
			HTH	50,319,643 B 11.00*	50,319,643 B 11.00*
			HTH	4,833,514 N	4,833,514 N
			HTH	4,673,541 U	4,673,541 U
7.	HTH595 - HEALTH RESOURCES ADMINISTRATION			2.00*	2.00*
	OPERATING		HTH	150,379 A	150,379 A
	INVESTMENT CAPITAL		HTH	6,000,000 C	C
8.	HTH210 - HAWAII HEALTH SYSTEMS CORPORATION - CORPORATE OFFICE			54.50*	54.50*

PROGRAM APPROPRIATIONS

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				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		OPERATING	HTH	12,509,280 B	12,509,280 B
		INVESTMENT CAPITAL	HTH	1,340,000 C	C
9.	HTH211	KAHUKU HOSPITAL OPERATING	HTH	1,500,000 A	1,500,000 A
10.	HTH212	HAWAII HEALTH SYSTEMS CORPORATION - REGIONS OPERATING	HTH	82,140,000 A 2,780.75 *	82,140,000 A 2,780.75 *
		INVESTMENT CAPITAL	HTH HTH	508,583,900 B 25,000,000 C	508,583,900 B 15,000,000 C
11.	HTH213	ALII COMMUNITY CARE OPERATING	HTH	1,500,000 B	1,500,000 B
12.	HTH420	ADULT MENTAL HEALTH - OUTPATIENT		145.50 *	145.50 *
		OPERATING	HTH HTH HTH	74,000,162 A 11,670,500 B 1,632,230 N	74,060,662 A 11,610,000 B 1,632,230 N
13.	HTH430	ADULT MENTAL HEALTH - INPATIENT		615.00 *	615.00 *
		OPERATING	HTH	52,895,657 A	52,895,657 A
		INVESTMENT CAPITAL	AGS	11,614,000 C	C
14.	HTH440	ALCOHOL AND DRUG ABUSE		22.00 *	22.00 *
		OPERATING	HTH HTH HTH	18,375,362 A 300,000 B 6.00 *	18,375,362 A 300,000 B 6.00 *
			HTH	13,609,867 N	13,609,867 N
15.	HTH460	CHILD AND ADOLESCENT MENTAL HEALTH		168.50 *	168.50 *
		OPERATING	HTH HTH HTH HTH	40,811,045 A 17.00 * 15,033,910 B 4,439,309 N 2,264,888 U	40,859,131 A 17.00 * 14,985,824 B 4,439,309 N 2,264,888 U
16.	HTH501	DEVELOPMENTAL DISABILITIES		191.75 *	191.75 *
		OPERATING	HTH HTH	68,439,167 A 3.00 * 1,038,992 B	69,737,652 A 3.00 * 1,038,992 B
17.	HTH495	BEHAVIORAL HEALTH ADMINISTRATION		57.50 *	57.50 *
		OPERATING	HTH HTH	6,882,191 A 3,557,363 N	6,882,191 A 3,557,363 N
18.	HTH610	ENVIRONMENTAL HEALTH SERVICES		98.00 *	98.00 *
		OPERATING	HTH HTH HTH HTH HTH	5,652,031 A 13.00 * 1,376,633 B 6.00 * 594,682 N 1.00 * 55,481 U	5,652,031 A 13.00 * 1,316,633 B 6.00 * 594,682 N 1.00 * 55,481 U

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
19.	HTH710	- STATE LABORATORY SERVICES			
	OPERATING		HTH	72.00 *	72.00 *
			HTH	6,080,558 A	6,080,558 A
				497,363 N	497,363 N
20.	HTH720	- HEALTH CARE ASSURANCE			
	OPERATING		HTH	20.90 *	20.90 *
			HTH	1,508,133 A	1,508,133 A
			HTH	406,000 B	406,000 B
			HTH	19.90 *	19.90 *
			HTH	1,659,515 N	1,659,515 N
21.	HTH906	- STATE HEALTH PLANNING AND DEVELOPMENT AGENCY			
	OPERATING		HTH	8.00 *	8.00 *
			HTH	508,814 A	508,814 A
				114,000 B	114,000 B
22.	HTH760	- HEALTH STATUS MONITORING			
	OPERATING		HTH	29.50 *	29.50 *
			HTH	1,382,629 A	1,410,190 A
			HTH	587,271 B	587,271 B
			HTH	4.00 *	4.00 *
			HTH	264,516 N	264,516 N
23.	HTH905	- DEVELOPMENTAL DISABILITIES COUNCIL			
	OPERATING		HTH	1.50 *	1.50 *
			HTH	218,048 A	218,048 A
			HTH	6.50 *	6.50 *
			HTH	478,797 N	478,797 N
24.	HTH907	- GENERAL ADMINISTRATION			
	OPERATING		HTH	118.50 *	118.50 *
			HTH	8,027,259 A	8,027,259 A
			HTH	1,051,850 N	1,051,850 N
	INVESTMENT CAPITAL		AGS	13,510,000 C	5,431,000 C
F. SOCIAL SERVICES					
1.	HMS301	- CHILD PROTECTIVE SERVICES			
	OPERATING		HMS	222.88 *	222.88 *
			HMS	21,497,187 A	21,497,187 A
			HMS	617,587 B	617,587 B
			HMS	202.62 *	202.62 *
			HMS	38,685,170 N	38,685,170 N
2.	HMS302	- GENERAL SUPPORT FOR CHILD CARE			
	OPERATING		HMS	21.07 *	21.07 *
			HMS	996,913 A	996,913 A
			HMS	14.93 *	14.93 *
			HMS	10,945,263 N	10,945,263 N
3.	HMS303	- CHILD PROTECTIVE SERVICES PAYMENTS			
	OPERATING		HMS	41,816,013 A	41,816,013 A
			HMS	20,095,666 N	20,095,666 N
4.	HMS305	- CASH SUPPORT FOR CHILD CARE			
	OPERATING		HMS	15,011,811 A	15,011,811 A
			HMS	38,530,754 N	38,530,754 N

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
5.	HMS501 - IN-COMMUNITY YOUTH PROGRAMS			12.00*	12.00*
	OPERATING		HMS	7,243,874 A	7,243,874 A
			HMS	3,657,363 N	3,657,363 N
6.	HMS503 - HAWAII YOUTH CORRECTIONAL FACILITY (HYCF)			124.00*	124.00*
	OPERATING		HMS	10,078,850 A	10,043,850 A
7.	DEF112 - SERVICES TO VETERANS			24.00*	24.00*
	OPERATING		DEF	2,358,443 A	4,913,716 A
	INVESTMENT CAPITAL		DEF	8,220,000 C	3,534,000 C
			DEF	2,000 N	1,000 N
8.	HMS601 - ADULT AND COMMUNITY CARE SERVICES			62.42*	62.42*
	OPERATING		HMS	5,480,824 A	5,480,824 A
			HMS	5,005,123 N	5,005,123 N
			HMS	10,000 R	10,000 R
			HMS	382,003 U	382,003 U
9.	HMS202 - AGED, BLIND AND DISABLED PAYMENTS				
	OPERATING		HMS	4,029,480 A	4,029,480 A
10.	HMS204 - GENERAL ASSISTANCE PAYMENTS				
	OPERATING		HMS	21,289,056 A	21,289,056 A
11.	HMS206 - FEDERAL ASSISTANCE PAYMENTS				
	OPERATING		HMS	5,108,943 N	5,108,943 N
12.	HMS211 - CASH SUPPORT FOR FAMILIES - SELF-SUFFICIENCY				
	OPERATING		HMS	26,073,079 A	22,694,156 A
			HMS	44,000,000 N	44,000,000 N
13.	HMS220 - RENTAL HOUSING SERVICES				
	OPERATING		HMS	4,401,556 A	4,301,556 A
			HMS	171.00*	171.00*
			HMS	36,142,225 N	35,470,497 N
			HMS	13.00*	13.00*
	INVESTMENT CAPITAL		HMS	4,112,106 W	4,062,106 W
			HMS	37,670,000 C	40,800,000 C
14.	HMS229 - HPHA ADMINISTRATION			71.00*	71.00*
	OPERATING		HMS	34,769,688 N	34,769,688 N
			HMS	17.00*	17.00*
			HMS	2,558,320 W	2,558,320 W
15.	HMS222 - RENTAL ASSISTANCE SERVICES			1.25*	1.25*
	OPERATING		HMS	1,059,030 A	1,059,030 A
			HMS	16.75*	16.75*
			HMS	25,875,685 N	25,875,685 N
16.	HMS224 - HOMELESS SERVICES			4.00*	4.00*
	OPERATING		HMS	15,525,824 A	15,525,824 A
			HMS	1,369,108 N	1,369,108 N

PROGRAM APPROPRIATIONS

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				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
17.	HMS605 - COMMUNITY-BASED RESIDENTIAL SUPPORT				
	OPERATING		HMS	17,125,395 A	17,125,395 A
18.	HMS401 - HEALTH CARE PAYMENTS				
	OPERATING		HMS	785,583,342 A	787,466,250 A
			HMS	847,877,988 N	870,295,801 N
			HMS	12,000,000 U	12,000,000 U
19.	HMS236 - CASE MANAGEMENT FOR SELF-SUFFICIENCY				
	OPERATING		HMS	310.66*	310.66*
				13,241,512 A	13,241,512 A
				244.34*	244.34*
			HMS	18,821,328 N	18,821,328 N
20.	HMS238 - DISABILITY DETERMINATION				
	OPERATING		HMS	45.00*	45.00*
				7,335,374 N	7,335,374 N
21.	ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES				
	OPERATING		ATG	81.94*	81.94*
				3,859,392 A	3,859,392 A
				159.06*	159.06*
			ATG	14,911,287 N	14,911,287 N
			ATG	2,231,224 T	2,231,224 T
22.	HMS237 - EMPLOYMENT AND TRAINING				
	OPERATING		HMS	469,505 A	469,505 A
			HMS	699,734 N	699,734 N
23.	HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS				
	OPERATING		HHL	115.00*	115.00*
				13,030,827 B	13,030,827 B
				3.00*	3.00*
			HHL	15,341,820 N	15,341,820 N
				82.00*	82.00*
	INVESTMENT CAPITAL		HHL	157,091,393 T	157,091,393 T
			HHL	5,000,000 C	C
			HHL	20,000,000 N	20,000,000 N
24.	HTH904 - EXECUTIVE OFFICE ON AGING				
	OPERATING		HTH	5.74*	5.74*
				5,948,402 A	5,948,402 A
				8.26*	8.26*
	INVESTMENT CAPITAL		HTH	7,802,796 N	7,533,492 N
			HTH	500,000 C	C
25.	HTH520 - DISABILITY AND COMMUNICATIONS ACCESS BOARD				
	OPERATING		HTH	5.00*	5.00*
			HTH	1,230,625 A	1,230,625 A
			HTH	10,000 B	10,000 B
				2.00*	2.00*
			HTH	195,776 U	195,776 U
26.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS				
	OPERATING		HMS	121.67*	121.67*
				9,337,999 A	6,458,643 A
				117.33*	117.33*
			HMS	44,849,236 N	18,845,032 N
27.	HMS903 - GENERAL SUPPORT FOR SELF-SUFFICIENCY SERVICES				
				34.05*	34.05*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		OPERATING	HMS	49,536,954 A 38.95 *	21,786,954 A 38.95 *
			HMS	62,928,283 N	62,928,283 N
28.	HMS904	GENERAL ADMINISTRATION (DHS)		141.50 *	141.50 *
		OPERATING	HMS	7,102,509 A 13.50 *	7,125,297 A 13.50 *
			HMS	1,347,016 N	1,347,016 N
29.	HMS901	GENERAL SUPPORT FOR SOCIAL SERVICES		10.22 *	10.22 *
		OPERATING	HMS	1,774,170 A 5.78 *	1,774,170 A 5.78 *
			HMS	1,539,447 N	1,539,447 N
G. FORMAL EDUCATION					
1.	EDN100	SCHOOL-BASED BUDGETING		12,552.60 *	12,552.60 *
		OPERATING	EDN	775,148,488 A	775,148,488 A
			EDN	7,530,000 B	7,530,000 B
			EDN	168,983,026 N	167,399,091 N
			EDN	28,990,000 T	28,990,000 T
			EDN	4,000,000 U	4,000,000 U
			EDN	28,525,743 V	V
			EDN	3,389,438 W	3,389,438 W
		INVESTMENT CAPITAL	EDN	144,336,000 B	165,760,000 B
			EDN	300,000 C	C
2.	EDN150	COMPREHENSIVE STUDENT SUPPORT SERVICES		5,116.62 *	5,116.62 *
		OPERATING	EDN	322,144,665 A	324,226,356 A
			EDN	100,000 B	100,000 B
				2.00 *	2.00 *
			EDN	45,714,379 N	45,714,379 N
				4.00 *	4.00 *
			EDN	3,500,000 W	3,500,000 W
3.	EDN200	INSTRUCTIONAL SUPPORT		384.00 *	384.00 *
		OPERATING	EDN	45,745,674 A	45,745,674 A
				6.00 *	6.00 *
			EDN	2,000,000 B	2,000,000 B
			EDN	687,000 N	687,000 N
			EDN	250,000 U	250,000 U
			EDN	19,356,874 V	20,073,434 V
4.	EDN300	STATE ADMINISTRATION		449.00 *	449.00 *
		OPERATING	EDN	43,344,985 A	43,344,985 A
			EDN	35,000 N	35,000 N
5.	EDN400	SCHOOL SUPPORT		640.00 *	640.00 *
		OPERATING	EDN	174,109,976 A	154,109,976 A
				726.50 *	726.50 *
			EDN	33,827,160 B	35,287,877 B
				3.00 *	3.00 *
			EDN	47,240,109 N	49,527,115 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
				4.00*	4.00*
		INVESTMENT CAPITAL	EDN EDN	12,522,625 W 5,200,000 B	12,522,325 W 5,200,000 B
6.		EDN500 - SCHOOL COMMUNITY SERVICES			
		OPERATING	EDN EDN EDN EDN EDN EDN	31.50* 5,072,889 A 3,631,000 B 954,222 N 4,000,000 T 6,300,000 U 10,995,000 W	31.50* 5,072,889 A 3,631,000 B 1,410,849 N 4,000,000 T 6,300,000 U 10,995,000 W
7.		EDN600 - CHARTER SCHOOLS			
		OPERATING	EDN	59,680,071 A	63,007,613 A
		INVESTMENT CAPITAL	EDN	2,118,000 C	C
8.		BUF745 - RETIREMENT BENEFITS PAYMENTS - DOE			
		OPERATING	BUF	280,677,870 A	277,200,000 A
9.		BUF765 - HEALTH PREMIUM PAYMENTS - DOE			
		OPERATING	BUF	236,284,465 A	264,546,608 A
10.		BUF725 - DEBT SERVICE PAYMENTS - DOE			
		OPERATING	BUF	222,989,025 A	264,173,610 A
11.		AGS807 - SCHOOL R&M, NEIGHBOR ISLAND DISTRICTS			
		OPERATING	AGS AGS	78.00* 4,470,406 A 1,500,000 U	78.00* 4,470,406 A 1,500,000 U
12.		EDN407 - PUBLIC LIBRARIES			
		OPERATING	EDN EDN EDN	555.50* 28,847,163 A 3,125,000 B 1,365,244 N	555.50* 28,847,163 A 3,125,000 B 1,365,244 N
		INVESTMENT CAPITAL	EDN	3,075,000 C	2,020,000 C
13.		DEF114 - HAWAII NATIONAL GUARD YOUTH CHALLENGE ACADEMY			
		OPERATING	DEF DEF	1,570,882 A 5,631,208 N	1,570,882 A 5,631,208 N
14.		UOH100 - UNIVERSITY OF HAWAII, MANOA			
		OPERATING	UOH UOH UOH UOH UOH	3,421.12* 203,626,623 A 293.25* 220,023,752 B 78.06* 5,821,702 N 134.25* 72,091,625 W 700,000 C	3,421.12* 203,626,623 A 293.25* 228,475,255 B 78.06* 5,941,206 N 134.25* 72,091,625 W C
15.		UOH110 - UNIVERSITY OF HAWAII, JOHN A. BURNS SCHOOL OF MEDICINE			
		OPERATING	UOH UOH UOH	198.22* 16,928,514 A 13,408,949 B 4,568,547 W	198.22* 16,928,514 A 13,408,949 B 4,568,547 W
16.		UOH210 - UNIVERSITY OF HAWAII, HILO			
				514.75*	514.75*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
		OPERATING	UOH	30,414,945 A	30,414,945 A
				95.00*	95.00*
			UOH	33,378,541 B	33,426,134 B
			UOH	394,018 N	394,018 N
				8.50*	8.50*
		INVESTMENT CAPITAL	UOH	6,271,946 W	6,271,946 W
			UOH	20,000,000 C	C
			UOH	16,000,000 E	E
			UOH	4,000,000 N	N
17.	UOH220 - HAWAII SMALL BUSINESS DEVELOPMENT CENTER	OPERATING	UOH	978,941 A	978,941 A
18.	UOH700 - UNIVERSITY OF HAWAII, WEST OAHU			93.00*	93.00*
		OPERATING	UOH	5,694,225 A	5,694,225 A
			UOH	6,897,408 B	8,561,172 B
			UOH	13,193 N	13,193 N
			UOH	327,958 W	327,958 W
		INVESTMENT CAPITAL	UOH	2,500,000 C	C
19.	UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES			1,831.00*	1,831.00*
		OPERATING	UOH	116,190,704 A	116,190,704 A
				82.00*	82.00*
			UOH	85,655,448 B	87,965,448 B
				15.60*	15.60*
			UOH	4,275,325 N	4,394,828 N
			UOH	5,041,211 W	5,041,211 W
		INVESTMENT CAPITAL	UOH	32,013,000 C	5,001,000 C
20.	UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT			403.00*	403.00*
		OPERATING	UOH	11,862,050 A	10,227,424 A
				8.00*	8.00*
			UOH	35,736,560 B	35,736,560 B
				4.00*	4.00*
			UOH	909,175 N	909,175 N
				15.00*	15.00*
			UOH	17,096,150 W	17,131,574 W
		INVESTMENT CAPITAL	UOH	80,004,000 C	13,977,000 C
21.	BUF748 - RETIREMENT BENEFITS PAYMENTS - UH	OPERATING	BUF	123,256,258 A	122,684,000 A
22.	BUF768 - HEALTH PREMIUM PAYMENTS - UH	OPERATING	BUF	78,550,089 A	88,092,504 A
23.	BUF728 - DEBT SERVICE PAYMENTS - UH	OPERATING	BUF	82,527,939 A	97,770,299 A
H. CULTURE AND RECREATION					
1.	UOH881 - UNIVERSITY OF HAWAII, AQUARIA			13.00*	13.00*
		OPERATING	UOH	611,256 A	611,256 A
				7.00*	7.00*
			UOH	3,117,141 B	3,117,141 B
			UOH	996,499 W	996,499 W

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
2.	AGS881 - STATE FOUNDATION ON CULTURE AND THE ARTS OPERATING	AGS	936,332 A	936,332 A	936,332 A
		AGS	15.50*	15.50*	15.50*
		AGS	4,215,466 B	4,215,466 B	4,215,466 B
		AGS	5.00*	5.00*	5.00*
		AGS	1,306,936 N	1,306,936 N	1,306,936 N
		AGS	625,000 U	625,000 U	625,000 U
3.	AGS818 - KING KAMEHAMEHA CELEBRATION COMMISSION OPERATING	AGS	57,874 T	57,874 T	57,874 T
4.	LNR802 - HISTORIC PRESERVATION OPERATING	LNR	17.00*	17.00*	17.00*
		LNR	1,360,596 A	1,360,596 A	1,285,596 A
		LNR	151,228 B	151,228 B	151,228 B
		LNR	751,089 N	751,089 N	746,089 N
5.	LNR804 - FOREST AND OUTDOOR RECREATION OPERATING	LNR	29.50*	29.50*	29.50*
		LNR	1,251,336 A	1,251,336 A	1,251,336 A
		LNR	6.50*	6.50*	6.50*
		LNR	712,912 B	712,912 B	712,912 B
		LNR	5.00*	5.00*	5.00*
		LNR	1,921,072 N	1,921,072 N	1,921,072 N
		LNR	572,088 W	572,088 W	572,088 W
	INVESTMENT CAPITAL	LNR	3,325,000 C	3,325,000 C	C
6.	LNR805 - RECREATIONAL FISHERIES OPERATING	LNR	7.00*	7.00*	7.00*
		LNR	265,524 A	265,524 A	265,524 A
		LNR	76,131 B	76,131 B	76,131 B
		LNR	1,021,746 N	1,021,746 N	1,021,746 N
7.	LNR806 - PARKS ADMINISTRATION AND OPERATION OPERATING	LNR	78.00*	78.00*	78.00*
		LNR	4,214,163 A	4,214,163 A	4,214,163 A
		LNR	38.00*	38.00*	38.00*
		LNR	6,467,439 B	6,467,439 B	6,467,439 B
		LNR	1,218,456 N	1,218,456 N	1,218,456 N
	INVESTMENT CAPITAL	LNR	31,075,000 C	31,075,000 C	19,520,000 C
		LNR	200,000 N	200,000 N	200,000 N
8.	LNR801 - OCEAN-BASED RECREATION OPERATING	LNR	104.00*	104.00*	104.00*
		LNR	16,808,643 B	16,808,643 B	16,808,643 B
		LNR	1,001,411 N	1,001,411 N	1,001,411 N
	INVESTMENT CAPITAL	LNR	13,825,000 C	13,825,000 C	4,000,000 C
		LNR	2,000,000 E	2,000,000 E	E
		LNR	1,500,000 N	1,500,000 N	1,000,000 N
9.	AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM OPERATING	AGS	38.50*	38.50*	38.50*
		AGS	8,944,121 B	8,944,121 B	8,944,121 B
	INVESTMENT CAPITAL	AGS	5,150,000 C	5,150,000 C	5,150,000 C

I. PUBLIC SAFETY

1. PSD402 - HALAWA CORRECTIONAL FACILITY

	OPERATING	PSD	395.00*	395.00*	395.00*
		PSD	22,526,784 A	22,526,784 A	22,526,784 A
		PSD	28,719 W	28,719 W	28,719 W

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
2.	PSD404 -	WAIAWA CORRECTIONAL FACILITY			
	OPERATING		PSD	110.00*	110.00*
			PSD	5,943,026 A	5,943,026 A
				15,000 W	15,000 W
3.	PSD405 -	HAWAII COMMUNITY CORRECTIONAL CENTER			
	OPERATING		PSD	163.00*	163.00*
				8,475,622 A	8,475,622 A
4.	PSD406 -	MAUI COMMUNITY CORRECTIONAL CENTER			
	OPERATING		PSD	185.00*	185.00*
			PSD	9,328,952 A	9,328,952 A
				209,721 S	209,721 S
5.	PSD407 -	OAHU COMMUNITY CORRECTIONAL CENTER			
	OPERATING		PSD	488.00*	488.00*
			PSD	26,897,053 A	26,897,053 A
				30,000 W	30,000 W
6.	PSD408 -	KAUAI COMMUNITY CORRECTIONAL CENTER			
	OPERATING		PSD	68.00*	68.00*
				3,651,826 A	3,651,826 A
7.	PSD409 -	WOMEN'S COMMUNITY CORRECTIONAL CENTER			
	OPERATING		PSD	132.00*	132.00*
				6,473,553 A	6,473,553 A
8.	PSD410 -	INTAKE SERVICE CENTERS			
	OPERATING		PSD	59.00*	59.00*
				3,275,470 A	3,275,470 A
9.	PSD420 -	CORRECTIONS PROGRAM SERVICES			
	OPERATING		PSD	164.00*	164.00*
				18,588,472 A	18,588,472 A
10.	PSD421 -	HEALTH CARE			
	OPERATING		PSD	196.10*	196.10*
				20,775,735 A	20,775,735 A
11.	PSD422 -	HAWAII CORRECTIONAL INDUSTRIES			
	OPERATING		PSD	2.00*	2.00*
				9,987,705 W	9,887,705 W
12.	PSD808 -	NON-STATE FACILITIES			
	OPERATING		PSD	9.00*	9.00*
				64,659,911 A	64,659,911 A
13.	PSD502 -	NARCOTICS ENFORCEMENT			
	OPERATING		PSD	13.00*	13.00*
			PSD	954,449 A	954,449 A
				206,161 N	206,161 N
			PSD	7.00*	7.00*
				682,964 W	673,984 W
14.	PSD503 -	SHERIFF			
	OPERATING		PSD	296.00*	296.00*
				13,213,117 A	13,423,849 A
				59.00*	59.00*
			PSD	5,076,280 U	5,076,280 U

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
15.	PSD611	- ADULT PAROLE DETERMINATIONS			
	OPERATING		PSD	3.00* 216,988A	3.00* 216,988A
16.	PSD612	- ADULT PAROLE SUPERVISION AND COUNSELING			
	OPERATING		PSD	55.00* 3,523,983A	55.00* 3,523,983A
17.	PSD613	- CRIME VICTIM COMPENSATION COMMISSION			
	OPERATING		PSD PSD	8.00* 1,892,173B 859,315N	8.00* 1,892,173B 859,315N
18.	PSD900	- GENERAL ADMINISTRATION			
	OPERATING		PSD PSD PSD	137.00* 10,364,924A 667,984B 75,065T	137.00* 10,364,924A 667,984B 75,065T
	INVESTMENT CAPITAL		PSD	9,000,000C	8,000,000C
19.	ATG231	- STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION			
	OPERATING		ATG ATG ATG	26.50* 1,499,894A 2,005,443N 30.50* 3,485,609W	26.50* 1,499,894A 2,005,443N 30.50* 3,185,609W
20.	LNR810	- PREVENTION OF NATURAL DISASTERS			
	OPERATING		LNR LNR	8.50* 2,059,158B 0.50* 560,602N	8.50* 2,059,158B 0.50* 370,602N
21.	DEF110	- AMELIORATION OF PHYSICAL DISASTERS			
	OPERATING		DEF DEF DEF DEF DEF	114.10* 10,606,579A 99.65* 88,233,296N 464,458S 12,044,738U	114.10* 10,664,584A 99.65* 85,298,962N 464,458S 12,044,738U
	INVESTMENT CAPITAL		AGS DEF AGS DEF	707,000C 9,593,000C 1,046,000N 47,026,000N	C 6,700,000C N 56,385,000N
J. INDIVIDUAL RIGHTS					
1.	CCA102	- CABLE TELEVISION			
	OPERATING		CCA	4.00* 1,786,537B	4.00* 1,786,537B
2.	CCA103	- CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES			
	OPERATING		CCA	23.00* 2,701,465B	23.00* 3,003,599B
3.	CCA104	- FINANCIAL SERVICES REGULATION			
	OPERATING		CCA CCA	34.00* 3,387,006B 110,000T	34.00* 3,384,920B 110,000T

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
4.	CCA105	PROFESSIONAL AND VOCATIONAL LICENSING		52.00*	52.00*
	OPERATING		CCA	5,573,217 B	5,573,217 B
			CCA	5.00*	5.00*
				2,086,311 T	2,061,311 T
5.	BUF901	PUBLIC UTILITIES COMMISSION		62.00*	62.00*
	OPERATING		BUF	11,049,409 B	11,386,174 B
6.	CCA106	INSURANCE REGULATORY SERVICES		81.00*	81.00*
	OPERATING		CCA	14,281,755 B	14,281,755 B
			CCA	200,000 T	200,000 T
7.	CCA110	OFFICE OF CONSUMER PROTECTION		14.00*	14.00*
	OPERATING		CCA	1,573,840 B	1,573,840 B
			CCA	100,681 T	100,681 T
8.	AGR812	MEASUREMENT STANDARDS		7.00*	7.00*
	OPERATING		AGR	384,525 A	384,525 A
9.	CCA111	BUSINESS REGISTRATION AND SECURITIES REGULATION		70.00*	70.00*
	OPERATING		CCA	6,649,240 B	6,649,240 B
10.	CCA112	REGULATED INDUSTRIES COMPLAINTS OFFICE		65.00*	65.00*
	OPERATING		CCA	5,579,836 B	5,579,836 B
11.	CCA191	GENERAL SUPPORT		43.00*	43.00*
	OPERATING		CCA	6,383,469 B	6,267,869 B
12.	LTG105	ENFORCEMENT OF INFORMATION PRACTICES		5.00*	5.00*
	OPERATING		LTG	401,935 A	401,935 A
13.	BUF151	OFFICE OF THE PUBLIC DEFENDER		81.00*	81.00*
	OPERATING		BUF	9,795,299 A	9,795,299 A
14.	LNR111	CONVEYANCES AND RECORDINGS		60.00*	60.00*
	OPERATING		LNR	4,129,966 B	4,129,966 B
15.	HMS888	COMMISSION ON THE STATUS OF WOMEN		1.00*	1.00*
	OPERATING		HMS	161,915 A	161,915 A
K. GOVERNMENT-WIDE SUPPORT					
1.	GOV100	OFFICE OF THE GOVERNOR		27.00*	27.00*
	OPERATING		GOV	3,176,357 A	3,176,357 A
			GOV	87,147 T	87,147 T
	INVESTMENT CAPITAL		GOV	1,000 C	1,000 C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
2.	LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR				
	OPERATING		LTG	3.00* 646,188 A	3.00* 646,188 A
3.	BED144 - STATEWIDE PLANNING AND COORDINATION				
	OPERATING		BED	12.00* 1,110,081 A	12.00* 1,110,081 A
			BED	5.00* 2,692,310 N	5.00* 2,692,310 N
			BED	2,000,000 W	2,000,000 W
4.	BED103 - STATEWIDE LAND USE MANAGEMENT				
	OPERATING		BED	5.00* 488,771 A	5.00* 488,771 A
5.	BED130 - ECONOMIC PLANNING AND RESEARCH				
	OPERATING		BED	13.00* 853,009 A	13.00* 853,009 A
6.	BUF101 - DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION				
	OPERATING		BUF	39.25* 11,332,082 A	39.25* 11,154,203 A
			BUF	0.75* 31,343 U	0.75* 31,343 U
	INVESTMENT CAPITAL		BUF	569,836,000 C	200,960,000 C
7.	AGS871 - CAMPAIGN SPENDING COMMISSION				
	OPERATING		AGS	5.00* 1,108,051 T	5.00* 4,683,051 T
8.	AGS879 - OFFICE OF ELECTIONS				
	OPERATING		AGS	17.50* 1,829,581 A	17.50* 2,636,469 A
			AGS	0.50* 7,473,714 N	0.50* 7,473,714 N
9.	TAX100 - COMPLIANCE				
	OPERATING		TAX	179.00* 8,786,865 A	179.00* 8,786,865 A
10.	TAX105 - TAX SERVICES AND PROCESSING				
	OPERATING		TAX	122.00* 6,209,621 A	122.00* 6,209,621 A
11.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION				
	OPERATING		TAX	72.00* 7,339,726 A	72.00* 7,030,556 A
			TAX	1,057,875 B	1,057,875 B
	INVESTMENT CAPITAL		TAX	333,000 C	C
12.	AGS101 - ACCOUNTING SYSTEM DEVELOPMENT AND MAINTENANCE				
	OPERATING		AGS	6.00* 513,981 A	6.00* 513,981 A
13.	AGS102 - EXPENDITURE EXAMINATION				
	OPERATING		AGS	16.00* 1,098,527 A	16.00* 1,098,527 A
14.	AGS103 - RECORDING AND REPORTING				
	OPERATING		AGS	11.00* 694,124 A	11.00* 694,124 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
15.	AGS104	- INTERNAL POST AUDIT			
	OPERATING		AGS	6.00* 441,975 A	6.00* 441,975 A
16.	BUF115	- FINANCIAL ADMINISTRATION			
	OPERATING		BUF	11.00* 1,793,147 A	11.00* 1,793,147 A
			BUF	9.00* 7,018,984 T	9.00* 7,018,984 T
			BUF	1.00* 70,260 U	1.00* 70,260 U
17.	BUF721	- DEBT SERVICE PAYMENTS			
	OPERATING		BUF	258,583,782 A	306,342,481 A
18.	ATG100	- LEGAL SERVICES			
	OPERATING		ATG	223.46* 17,712,629 A	223.46* 17,712,629 A
			ATG	22.52* 2,405,785 B	22.52* 2,405,785 B
			ATG	13.00* 8,539,330 N	13.00* 8,496,088 N
			ATG	0.50* 3,990,504 T	0.50* 3,990,504 T
			ATG	57.35* 9,381,701 U	57.35* 9,476,083 U
			ATG	4.45* 2,539,009 V	4.45* 744,959 V
			ATG	3,114,984 W	3,114,984 W
19.	AGS131	- INFORMATION PROCESSING AND COMMUNICATION SERVICES			
	OPERATING		AGS	115.00* 12,404,923 A	115.00* 12,671,645 A
			AGS	74,410 B	90,016 B
			AGS	33.00* 3,312,584 U	33.00* 3,312,584 U
	INVESTMENT CAPITAL		AGS	8,235,000 C	8,135,000 C
20.	AGS111	- ARCHIVES - RECORDS MANAGEMENT			
	OPERATING		AGS	16.00* 780,072 A	16.00* 780,072 A
21.	AGS891	- WIRELESS ENHANCED 911 BOARD			
	OPERATING		AGS	14,000,000 B	9,000,000 B
22.	HRD102	- WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFECTIVENESS			
	OPERATING		HRD	81.00* 12,979,935 A	81.00* 12,979,935 A
			HRD	700,000 B	700,000 B
			HRD	4,886,281 U	4,886,281 U
23.	HRD191	- SUPPORTING SERVICES - HUMAN RESOURCES DEV			
	OPERATING		HRD	11.00* 1,444,386 A	11.00* 1,444,386 A
24.	BUF141	- EMPLOYEES' RETIREMENT SYSTEM			
	OPERATING		BUF	99.00* 10,828,223 X	99.00* 10,828,223 X

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
25.	BUF143	HAWAII EMPLOYER - UNION TRUST FUND			
	OPERATING		BUF	36.00* 5,109,314 T	36.00* 5,104,514 T
26.	BUF741	RETIREMENT BENEFITS PAYMENTS			
	OPERATING		BUF	189,315,975 A	185,809,000 A
27.	BUF761	HEALTH PREMIUM PAYMENTS			
	OPERATING		BUF	137,687,959 A	160,386,311 A
28.	LNR101	PUBLIC LANDS MANAGEMENT			
	OPERATING		LNR	49.00* 12,308,577 B	49.00* 12,258,577 B
	INVESTMENT CAPITAL		LNR	75,238 N	75,238 N
			LNR	2,500,000 S	S
29.	AGS203	STATE RISK MANAGEMENT AND INSURANCE ADMINISTRATION			
	OPERATING		AGS	6,987,995 A	6,987,995 A
			AGS	4.00*	4.00*
			AGS	25,285,334 W	25,285,334 W
30.	AGS211	LAND SURVEY			
	OPERATING		AGS	10.00* 646,586 A	10.00* 646,586 A
			AGS	285,000 U	285,000 U
31.	AGS223	OFFICE LEASING			
	OPERATING		AGS	4.00* 10,613,034 A	4.00* 10,613,034 A
			AGS	5,500,000 U	5,500,000 U
32.	AGS221	PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION			
	OPERATING		AGS	16.00* 1,199,707 A	16.00* 1,199,707 A
			AGS	4,000,000 W	4,000,000 W
	INVESTMENT CAPITAL		AGS	46,004,000 C	23,365,000 C
			AGS	3,261,000 R	R
33.	AGS231	CENTRAL SERVICES - CUSTODIAL SERVICES			
	OPERATING		AGS	117.00* 15,228,845 A	117.00* 14,628,845 A
			AGS	58,744 B	58,744 B
			AGS	1,099,084 U	1,099,084 U
34.	AGS232	CENTRAL SERVICES - GROUNDS MAINTENANCE			
	OPERATING		AGS	27.00* 1,652,934 A	27.00* 1,652,934 A
35.	AGS233	CENTRAL SERVICES - BUILDING REPAIRS AND ALTERATIONS			
	OPERATING		AGS	33.00* 2,860,134 A	33.00* 2,860,134 A
36.	AGS240	STATE PROCUREMENT			
	OPERATING		AGS	22.00* 1,014,722 A	22.00* 1,126,903 A
37.	AGS244	SURPLUS PROPERTY MANAGEMENT			
	OPERATING		AGS	5.00* 1,798,996 W	5.00* 1,798,996 W

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
38.	AGS251	AUTOMOTIVE MANAGEMENT - MOTOR POOL			
	OPERATING		AGS	12.50* 2,549,863 W	12.50* 2,549,863 W
39.	AGS252	AUTOMOTIVE MANAGEMENT - PARKING CONTROL			
	OPERATING		AGS	24.50* 3,355,757 W	24.50* 3,355,757 W
40.	AGS901	GENERAL ADMINISTRATIVE SERVICES			
	OPERATING		AGS	35.00* 2,694,264 A 2.00* 146,503 U	35.00* 2,694,264 A 2.00* 146,503 U
41.	SUB201	CITY AND COUNTY OF HONOLULU INVESTMENT CAPITAL	CCH	2,000,000 C	2,000,000 C
42.	SUB401	COUNTY OF MAUI INVESTMENT CAPITAL	COM	C	1,000,000 C
43.	SUB501	COUNTY OF KAUAI INVESTMENT CAPITAL	COK	C	30,000 C

PART III. PROGRAM APPROPRIATION PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that of the general fund appropriation for agricultural resource management (AGR 141), the sum of \$454,415 for fiscal year 2011-2012 and the sum of \$454,415 for fiscal year 2012-2013 shall be deposited into the irrigation system revolving fund to be expended for the purposes of the fund.

SECTION 5. Provided that of the special fund appropriation for agricultural resource management (AGR 141), the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the department of agriculture for the continued operation and maintenance of the east Kauai irrigation system.

SECTION 6. Provided that of the special fund appropriation for agribusiness development and research (AGR 161), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the department of agriculture for research and training in food security and food sustainability programs of the University of Hawaii at Manoa, college of tropical agriculture and human resources.

SECTION 7. Provided that of the general fund appropriation for agribusiness development and research (AGR 161), the sum of \$50,601 for fiscal year 2011-2012 and the sum of \$50,601 for fiscal year 2012-2013 may be deposited into the Hawaii agricultural development revolving fund to be expended for the purposes of the fund.

TRANSPORTATION

SECTION 8. Provided that of the special fund appropriations for the airports division (TRN 102-TRN 195), the following sums specified for special repair and maintenance projects in fiscal biennium 2011-2013 shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
TRN 102	\$6,800,000	\$6,800,000
TRN 104	\$ 500,000	\$ 500,000
TRN 111	\$1,005,000	\$1,000,000
TRN 114	\$1,600,000	\$1,600,000
TRN 116	\$ 250,000	\$ 250,000
TRN 118	\$ 190,000	\$ 190,000
TRN 131	\$1,905,000	\$1,900,000
TRN 133	\$ 100,000	\$ 100,000
TRN 135	\$ 550,000	\$ 550,000
TRN 141	\$ 475,000	\$ 475,000
TRN 143	\$ 210,000	\$ 160,000
TRN 151	\$ 400,000	\$ 880,000
TRN 161	\$ 950,000	\$ 950,000
TRN 163	\$ 18,000	\$ 25,000
TRN 195	\$3,047,000	\$2,620,000;

and provided further that any unexpended funds shall lapse to the airport special fund.

SECTION 9. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$78,107,803 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$95,148,450 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Interest and principal on revenue bonds	\$78,107,803	\$95,148,450;

provided further that any unexpended fund appropriation may be expended for principal and interest on revenue bonds payable from the passenger facility charge special fund, as necessary; and provided further that any unexpended funds shall lapse to the airport special fund.

SECTION 10. Provided that of the special fund appropriations for the harbors division (TRN 301-TRN 395), the following sums specified for special repair and maintenance projects in fiscal biennium 2011-2013 shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
TRN 301	\$7,251,250	\$7,251,250
TRN 303	\$1,133,192	\$1,133,192
TRN 311	\$ 816,000	\$ 816,000
TRN 313	\$ 646,000	\$ 646,000
TRN 331	\$1,291,000	\$1,291,000
TRN 333	\$ 30,000	\$ 30,000
TRN 341	\$ 479,229	\$ 479,229
TRN 351	\$ 244,837	\$ 244,837
TRN 361	\$1,045,000	\$1,045,000
TRN 363	\$ 252,031	\$ 252,031;

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and provided further that any unexpended funds shall lapse to the harbor special fund.

SECTION 11. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$35,003,839 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$35,032,698 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Interest and principal on general obligation bonds	\$ 3,380,916	\$ 3,380,832
Interest and principal on revenue bonds	\$31,622,923	\$31,651,866;

provided further that any unexpended funds shall lapse to the harbor special fund.

SECTION 12. Provided that of the special fund appropriations for the highways division (TRN 501-TRN 561), the following sums specified for special repair and maintenance projects in fiscal biennium 2011-2013 shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
TRN 501	\$20,700,000	\$36,443,000
TRN 511	\$ 9,500,000	\$16,500,000
TRN 531	\$12,000,000	\$20,500,000
TRN 561	\$ 7,000,000	\$12,000,000;

and provided further that any unexpended funds shall lapse to the state highway fund.

SECTION 13. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$52,871,334 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$51,523,720 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Interest and principal on general obligation bonds	\$ 8,166,474	\$ 4,820,206
Interest and principal on revenue bonds	\$44,704,860	\$ 46,703,514;

provided that any unexpended funds shall lapse to the highway special fund.

SECTION 14. Provided that of the special fund appropriation for Kauai Highways (TRN 561), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the department of transportation to provide Saturday contraflow services along Kuhio Highway State Route 56 from Kapaa to Hanamaulu.

HEALTH

SECTION 15. Provided that the department of health and the department of human services shall each prepare a detailed report on the expenditures of funds from the tobacco Master Settlement Agreement; and provided further

that each department shall submit quarterly reports to the legislature on October 15, January 15, April 15, and July 15.

SECTION 16. Provided that the Hawaii Community Foundation, as the administrator of the Hawaii tobacco prevention and control trust fund, shall prepare a detailed report on the financial condition, use of funds, and performance outcomes for the fund; and provided further that the Hawaii Community Foundation shall submit quarterly reports to the legislature on October 15, January 15, April 15, and July 15.

SOCIAL SERVICES

SECTION 17. Provided that of the general fund appropriation for services to veterans (DEF 112), the sum of \$634,491 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$3,189,764 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the operation and maintenance of veterans' cemeteries, statewide; provided further that only amounts that will be reimbursed by federal sources shall be expended; provided further that the federal reimbursements shall be deposited to the credit of the general fund; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 18. Provided that of the general fund appropriation for health care payments (HMS 401), the sum of \$5,700,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$5,700,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be utilized to draw down additional federal matching funds specifically for the benefit of the Hawaii health systems corporation; provided that the aforementioned general fund appropriations and the resulting federal matching funds shall be provided as supplemental payments through QUEST and QUEST Expanded health plans to Hawaii health systems corporation facilities; provided further that these payments shall be in addition to the \$6,900,000 in supplemental payments currently being paid to Hawaii health systems corporation facilities by the QUEST Expanded health plans; and provided further that if additional funding for the benefit of the Hawaii health systems corporation is made available, any unexpended funds shall be transferred to the Hawaii health systems corporation - regions (HTH 212).

FORMAL EDUCATION

SECTION 19. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$57,446,372 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$60,603,057 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by charter schools to fund their educational programs; provided further that the funds shall not be expended for any other purpose; provided further that for fiscal years 2011-2012 and 2012-2013, any general fund amount that exceeds the product derived from multiplying:

- (1) The actual charter school enrollment count on October 15, 2011, and October 15, 2012, as reviewed and verified by the charter school administrative office by November 15, 2011, and November 15, 2012; and
- (2) The sum of \$5,867 for fiscal year 2011-2012 and the sum of \$5,749 for fiscal year 2012-2013;

shall lapse to the charter schools account within the state treasury; provided further that charter schools shall prepare a report that shall include but not be limited to a detailed breakout of the all means of financing budget for the cur-

rent and next fiscal year and actual expenditures for the last completed fiscal year for each charter school, a report of all other funds expended on behalf of each school, and a report detailing by school:

- (1) The enrollment projections used to submit the current budget request;
- (2) The actual October 15, 2011, and the actual October 15, 2012, enrollment count as reported by each school for the current school year;
- (3) The charter school administrative office's reviewed and verified October 15, 2011, and October 15, 2012, enrollment count; and
- (4) The charter school administrative office's reviewed and verified November 15, 2011, and November 15, 2012, enrollment count;

and provided further that the charter school administrative office shall submit these reports to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 20. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$2,233,699 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$2,404,556 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for facility costs; provided further that the amount that exceeds \$228 multiplied by the actual October 15 charter school enrollment count for the current school year, as reviewed and verified by the charter school administrative office by November 15, shall lapse to the charter schools account within the state treasury; provided further that the funds shall be distributed to charter schools based on methodology developed by the charter school administrative office; provided further that charter school administrative office shall prepare a report that shall include but not be limited to a detailed breakout of actual facility-related expenditures for the last completed fiscal year for each charter school and the method of funding; provided further that the report shall include an explanation of the methodology developed by the charter school administrative office to distribute the funds; and provided further that the charter school administrative office shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 21. Provided that for fiscal years 2011-2012 and 2012-2013, no general funds in excess of the amount the charter school administrative office determines should be allocated to the Myron B. Thompson Academy Public Charter School pursuant to section 302B-12(c), Hawaii Revised Statutes, minus \$255,000, shall be expended by or for Myron B. Thompson Academy Public Charter School until the charter school review panel has issued a determination that the Myron B. Thompson Academy Public Charter School administrators and local school board have appeared before the panel and have adequately responded to all inquiries it and the legislature have posed.

SECTION 22. Provided that the charter school administrative office (EDN 600) shall prepare a report for each charter school on the internal policies and procedures for the procurement of goods, services, and construction for each school and also the level of conformity with the goals of public accountability and public procurement practices for each school; provided further that the report shall include but not be limited to an evaluation of the benefits for each charter school as a result of being exempt from the requirements of chapter 103D, Hawaii Revised Statutes, and discussion on the frequency with which charter schools and their local school boards use the provisions of chapter

103D, Hawaii Revised Statutes; provided further that the report shall cover the last completed fiscal year and the current fiscal year; and provided further that the charter school administrative office shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 23. Provided that the University of Hawaii shall prepare a detailed report on the expenditures of the funds from the tobacco Master Settlement Agreement for university revenue-undertakings; and provided further that the university shall submit quarterly reports to the legislature on October 15, January 15, April 15 and July 15.

PUBLIC SAFETY

SECTION 24. Provided that for sheriff (PSD 503), the sheriff division of the department of public safety shall prepare a report on special duty assignments that shall include the following:

- (1) Implemented policies and procedures covering special duty assignments, including a description of how the department is ensuring that all funds received by deputy sheriffs for special duty assignments are reported to federal and state taxing authorities;
- (2) A detail of amounts charged to each state agency for deputy sheriff special duty assignments;
- (3) The total amount received by each deputy sheriff for special duty assignments with state agencies and the amount received for special duty assignments with non-state agencies;
- (4) The average amount of overtime paid, if any, to deputy sheriffs for special duty assignments; and
- (5) The average amount of other income paid to deputy sheriffs for special duty assignments;

and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 25. Provided that of the general fund appropriation for amelioration of physical disasters (DEF 110), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for relief from major disasters pursuant to section 127-11, Hawaii Revised Statutes; provided further that any funds not expended for this purpose shall lapse to the general fund.

INDIVIDUAL RIGHTS

SECTION 26. Provided that of the special fund appropriation for cable television (CCA 102), the sum of \$300,000 for fiscal year 2011-2012 and \$300,000 for fiscal year 2012-2013 shall be expended by the department of commerce and consumer affairs for institutional network (INET) projects for equipment and connection on those projects requested by the department of education.

SECTION 27. Provided that of the special fund appropriation for general support (CCA 191), the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be used to fully reimburse the department of the attorney general for all services received from that depart-

ment; and provided further that any unexpended funds shall lapse to the special fund.

GOVERNMENT-WIDE SUPPORT

SECTION 28. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for the governor's "contingent fund" pursuant to section 37-71(f), Hawaii Revised Statutes; and provided further that such funds may be transferred to other programs and agencies and allotted, with the approval of the governor, to meet contingencies as they arise.

SECTION 29. Provided that of the general fund appropriation for departmental administration and budget division (BUF 101), the sum of \$612,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$612,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended as a subsidy to the Bishop Museum; provided further that any unexpended funds shall lapse to the general fund.

SECTION 30. Provided that of the general fund appropriation for office of elections (AGS 879), the sum of \$113,791 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$113,791 or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for 14.5 civil service positions converted from exempt under Act 213, Session Laws of Hawaii 2007; provided further that only the amount needed to fund the difference between the exempt position salaries and the actual salary requirements of the civil service positions shall be expended; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of accounting and general services shall prepare a report detailing:

- (1) The positions converted to civil service;
- (2) The status of each of the 14.5 positions not yet converted to civil service and reason for the delay of conversion; and
- (3) The actual additional amount needed to convert each of the 14.5 exempt positions to civil service for the most recently completed fiscal year;

and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 31. Provided that the office of elections (AGS 879) prepare quarterly reports, beginning with the first quarter of fiscal year 2011-2012 and every three months thereafter, to include the following:

- (1) An updated list of vacant positions, noting current recruitment status;
- (2) A detailed listing of travel and overtime expenditures for the quarter, including justification or reason for expenditure;
- (3) A detailed listing of milestones, accomplishments, and activities of the chief elections officer and each section occurring during the quarter; and
- (4) Updated planning timeline for the 2012 elections, including justification of any changes from the previously reported timeline;

and provided further that the office of elections shall submit the reports to the legislature no later than thirty days after the last day of each quarter.

SECTION 32. Provided that of the general fund appropriations for debt service payments (BUF 721-BUF 728), the following sums specified in fiscal biennium 2011-2013 shall be expended for principal and interest payments on general obligation bonds only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 721	\$ 258,583,782	\$ 306,342,481
BUF 725	\$ 222,989,025	\$ 264,173,610
BUF 728	\$ 82,527,939	\$ 97,770,299;

provided further that unrequired balances may be transferred only to retirement benefits payments (BUF 741-BUF 748) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 33. Provided that of the general fund appropriations for retirement benefits payments (BUF 741-BUF 748), the following sums specified in fiscal biennium 2011-2013 shall be expended for the state employer's share of the employees' retirement system's pension accumulation only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 741	\$171,388,684	\$173,662,109
BUF 745	\$181,970,000	\$184,245,000
BUF 748	\$ 81,275,000	\$ 82,291,000;

Provided that the amounts in BUF 741 accounts for amounts that shall be transferred in pursuant to section 96; provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 34. Provided that of the general fund appropriations for retirement benefits payments (BUF 741-BUF 748), the following sums specified in fiscal biennium 2011-2013 shall be expended for the state employer's share of the social security/Medicare payment for employees only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 741	\$ 90,621,637	\$ 84,840,795
BUF 745	\$ 98,707,870	\$ 92,955,000
BUF 748	\$ 41,981,258	\$ 40,393,000;

Provided that the amounts in BUF 741 accounts for amounts that shall be transferred in pursuant to section 96; provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 35. Provided that of the general fund appropriations for health premium payments (BUF 761-BUF 768), the following sums specified in fiscal biennium 2011-2013 shall be expended for the state employer's share of health premiums for active employees and retirees only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 761	\$187,687,959	\$210,386,311
BUF 765	\$236,284,465	\$264,546,608
BUF 768	\$ 78,550,089	\$ 88,092,504;

Provided that the amounts in BUF 761 accounts for amounts that shall be transferred in pursuant to section 97; provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and retirement benefits payments (BUF 741-BUF 748); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

PART IV. CAPITAL IMPROVEMENT PROGRAM PROVISIONS

SECTION 36. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project if such combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

A. ECONOMIC DEVELOPMENT

BED107 - FOREIGN TRADE ZONE

- FOREIGN TRADE ZONE IMPORT-EXPORT STEP-UP INCUBATOR, MAUKA RENOVATION, OAHU

DESIGN AND CONSTRUCTION FOR RENOVATION OF MAUKA END OF THE FOREIGN TRADE ZONE WAREHOUSE TO PROVIDE 30,000 SQ. FT. OF ADDITIONAL OFFICE SPACE WITH 40 INDIVIDUAL OFFICES, COMMON CONFERENCE ROOM AND OTHER FACILITIES TO SUPPORT IMPORT-EXPORT RELATED SMALL BUSINESSES. THIS IS A "SHOVEL-READY" PROJECT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		750	
CONSTRUCTION		6,750	
TOTAL FUNDING	BED	4,500D	D
	BED	3,000N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
AGR141 - AGRICULTURAL RESOURCE MANAGEMENT					
2.	SW0602	STATE IRRIGATION SYSTEM RESERVOIR SAFETY IMPROVEMENTS, STATEWIDE			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR STATEWIDE RESERVOIR SAFETY IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		1	1
		DESIGN		1,000	1
		CONSTRUCTION		2,499	2,498
		TOTAL FUNDING	AGR	2,500C	1,500C
			AGR	1,000N	1,000N
3.	980002	LOWER HAMAKUA DITCH WATERSHED PROJECT, HAWAII			
		LAND, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE LOWER HAMAKUA DITCH SYSTEM, TOGETHER WITH APPURTENANT WORKS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		2	2
		DESIGN		2	2
		CONSTRUCTION		6,396	2,996
		TOTAL FUNDING	AGR	3,200C	1,500C
			AGR	3,200N	1,500N
4.	200603	WAIMANALO IRRIGATION SYSTEM IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIMANALO IRRIGATION SYSTEM, OAHU			
		DESIGN		100	
		CONSTRUCTION		1,750	1,000
		TOTAL FUNDING	AGR	1,850C	1,000C
5.	P97002	UPCOUNTRY MAUI WATERSHED PROJECT, MAUI			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		2	2
		DESIGN		2	2
		CONSTRUCTION		2,996	2,996
		TOTAL FUNDING	AGR	1,500C	1,500C
			AGR	1,500N	1,500N
6.	201006	KEKAHA DITCH IMPROVEMENTS, KAUAI			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE BLACK PIPE SIPHON, PALI WOODEN FLUME, AND OTHER STRUCTURES.			
		PLANS		100	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		DESIGN		200	
		CONSTRUCTION			1,400
		TOTAL FUNDING	AGR	300 C	1,400 C
7.	200402	MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE MOLOKAI IRRIGATION SYSTEM.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,248	
		TOTAL FUNDING	AGR	1,250 C	C
8.	201101	KAHUKU AGRICULTURAL PARK SUBDIVISION MISCELLANEOUS IMPROVEMENTS, OAHU			
		CONSTRUCTION OF MISCELLANEOUS IMPROVEMENTS TO THE KAHUKU AGRICULTURAL PARK SUBDIVISION.			
		CONSTRUCTION		110	
		TOTAL FUNDING	AGR	110 C	C
9.		STATE AGRICULTURAL WATER USE DEVELOPMENT PLAN, STATEWIDE			
		PLANS FOR STATE AGRICULTURAL WATER USE DEVELOPMENT PLAN, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		2,350	5,350
		TOTAL FUNDING	AGR	1,000 C	1,000 C
			AGR	1,350 N	4,350 N
10.	201104	WAIAHOLE WATER SYSTEMS IMPROVEMENTS, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO WAIAHOLE WATER SYSTEM, OAHU.			
		PLANS		1	
		DESIGN		499	
		CONSTRUCTION			2,500
		TOTAL FUNDING	AGR	500 C	2,500 C
11.	21103	KA'U IRRIGATION SYSTEM, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE TRANSMISSION DITCH AND FLUME SYSTEM OF THE FORMER KA'U AGRIBUSINESS PLANTATION'S IRRIGATION SYSTEM.			
		PLANS		1	
		DESIGN		499	
		CONSTRUCTION			1,500
		TOTAL FUNDING	AGR	500 C	1,500 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH

12.		HAWAII LIVESTOCK SLAUGHTERHOUSE, OAHU				
		DESIGN, CONSTRUCTION AND EQUIPMENT TO INSTALL A PHOTOVOLTAIC SYSTEM FOR THE LIVESTOCK SLAUGHTERHOUSE LOCATED IN CAMPBELL INDUSTRIAL PARK.				
		DESIGN			1	
		CONSTRUCTION			748	
		EQUIPMENT			1	
		TOTAL FUNDING	AGR		750 C	

AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE

13.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE.				
		DESIGN			250	100
		CONSTRUCTION			500	400
		TOTAL FUNDING	AGR		750 C	500 C

LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT

14.		ANUENUE FISHERIES RESEARCH CENTER MAINTENANCE AND ELECTRICAL UPGRADES, OAHU				
		DESIGN AND CONSTRUCTION FOR MAINTENANCE AND SAFETY UPGRADES AT THE ANUENUE FISHERIES RESEARCH CENTER, OAHU.				
		DESIGN			50	
		CONSTRUCTION				320
		TOTAL FUNDING	LNR		50 C	320 C

BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION

15.	TE0012	CHILLER REPLACEMENT WITH ENERGY EFFICIENT TECHNOLOGIES AT MRTC, MAUI				
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR REPLACEMENT AND RELOCATION OF THE CHILLER WITH ENERGY EFFICIENT TECHNOLOGIES AT THE MAUI RESEARCH AND TECHNOLOGY CENTER.				
		PLANS			25	
		DESIGN			69	
		CONSTRUCTION			200	
		EQUIPMENT			440	
		TOTAL FUNDING	BED		734 B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013

BED146 - NATURAL ENERGY LAB OF HAWAII AUTHORITY

16.	NELHA28	NELHA 40" SEAWATER PIPES UPGRADE, HAWAII				
		CONSTRUCTION FOR MOORING SYSTEM OF 40" SEAWATER PIPELINES UPGRADE.				
		CONSTRUCTION		3,500		
		TOTAL FUNDING	BED	3,500C		C

LNR141 - WATER AND LAND DEVELOPMENT

17.	J45	ROCKFALL AND FLOOD MITIGATION, STATEWIDE				
		PLANS, DESIGN AND CONSTRUCTION FOR ROCKFALL AND FLOOD MITIGATION AT VARIOUS LOCATIONS, STATEWIDE. THE LEGISLATURE FINDS AND DECLARES THAT THIS APPROPRIATION IS IN THE PUBLIC INTEREST AND FOR THE PUBLIC'S HEALTH, SAFETY AND GENERAL WELFARE OF THE STATE.				
		PLANS		1		1
		DESIGN		1		1
		CONSTRUCTION		3,238		2,498
		TOTAL FUNDING	LNR	3,240C		2,500C
18.		KOKEE ROAD, WAIMEA, KAUAI				
		PLANS, DESIGN AND CONSTRUCTION TO UPGRADE AND RESURFACE KOKEE ROAD FROM MILE MARKER 15 TO THE KALALAU LOOKOUT.				
		PLANS		1		
		DESIGN		1		
		CONSTRUCTION		498		
		TOTAL FUNDING	LNR	500C		C

BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY

19.	HCD001	HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS, OAHU				
		PLANS FOR COSTS RELATED TO WAGES AND FRINGE BENEFITS FOR PERMANENT AND NON-PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS AS MAY BE AVAILABLE.				
		PLANS		1,855		1,855
		TOTAL FUNDING	BED	1,855C		1,855C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORP

- 20. HFDC04 RENTAL HOUSING TRUST FUND INFUSION, STATEWIDE
 CONSTRUCTION TO PROVIDE AN INFUSION OF FUNDS TO FINANCE ADDITIONAL AFFORDABLE RENTAL HOUSING STATEWIDE.

	CONSTRUCTION		10,000		5,000
	TOTAL FUNDING	BED	10,000C		5,000C

- 21. HFDC06 SENIOR RESIDENCE AT IWILEI, OAHU
 CONSTRUCTION OF 160 LOW INCOME ELDERLY RENTAL APARTMENTS; MAY INCLUDE ADULT DAY CARE CENTER, OFFICE SPACE FOR NON-PROFIT AGENCIES, ON-SITE PARKING, RESIDENT MANAGER'S UNIT AND OFFICE, AND OTHER COMMON AREAS.

	CONSTRUCTION		26,000		
	TOTAL FUNDING	BED	26,000C		C

- 22. LOW-INCOME HOUSING TAX CREDIT LOANS, STATEWIDE
 CONSTRUCTION TO PROVIDE LOW-INCOME HOUSING TAX CREDIT LOANS PURSUANT TO SECTION 201H, HAWAII REVISED STATUTES.

	CONSTRUCTION		7,000		
	TOTAL FUNDING	BED	7,000C		C

B. EMPLOYMENT

LBR903 - OFFICE OF COMMUNITY SERVICES

- 1. PACIFIC GATEWAY CENTER, OAHU
 PLANS, DESIGN AND CONSTRUCTION TO CONSTRUCT THE KE'EHU COMMUNITY RESOURCE CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

	PLANS		1		
	DESIGN		1		
	CONSTRUCTION		998		
	TOTAL FUNDING	LBR	1,000C		C

- 2. PAKAKOLEA DEVELOPMENT CENTER, OAHU
 DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE PAKAKOLEA DEVELOPMENT CENTER, OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

	DESIGN		1		
	CONSTRUCTION		249		
	TOTAL FUNDING	LBR	250C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
3.		HAWAII PUBLIC TELEVISION FOUNDATION, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW BUILDING FOR PBS HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,998	
		TOTAL FUNDING	LBR	2,000C	C
4.		EASTER SEALS HAWAII, MAUI			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE EASTER SEALS HAWAII CAMPUS, MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		948	
		TOTAL FUNDING	LBR	950C	C
5.		HALE KIPA, INC., OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO CONSTRUCT THE HALE KIPA SERVICES CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,298	
		TOTAL FUNDING	LBR	1,300C	C
6.		ST. FRANCIS HEALTHCARE FOUNDATION OF HAWAII, OAHU			
		DESIGN AND CONSTRUCTION FOR AN INTERGENERATIONAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		999	
		TOTAL FUNDING	LBR	1,000C	C
7.		WAIKIKI COMMUNITY CENTER, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIKIKI COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		229	
		TOTAL FUNDING	LBR	230C	C
8.		SPECIAL OLYMPICS HAWAII, INC, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR A SPORTS AND FITNESS COMPLEX IN KAPOLEI, OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,498	
		TOTAL FUNDING	LBR	1,500 C	C
9.		KAUAI ECONOMIC OPPORTUNITY, INC. , KAUAI			
		PLANS, DESIGN AND CONSTRUCTION TO REPLACE DAMAGED ROOF. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		78	
		TOTAL FUNDING	LBR	80 C	C
HMS802 - VOCATIONAL REHABILITATION					
10.		HOOPONO VOCATIONAL REHABILITATION FOR BLIND DIVISION, DEPARTMENT OF HUMAN SERVICES, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR VARIOUS UPGRADES FOR THE HOOPONO PROGRAM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		494	
		EQUIPMENT		1	
		TOTAL FUNDING	HMS	497 C	C
C. TRANSPORTATION FACILITIES					
TRN102 - HONOLULU INTERNATIONAL AIRPORT					
1.	A23N	HONOLULU INTERNATIONAL AIRPORT, RUNWAY 4R IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR RUNWAY 4R STRUCTURAL IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).			
		CONSTRUCTION		21,400	
		TOTAL FUNDING	TRN	15,000 N	N
			TRN	6,400 X	X

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
2.	A23O	HONOLULU INTERNATIONAL AIRPORT, RUNWAY 22 CULVERT IMPROVEMENTS, OAHU				
		CONSTRUCTION FOR RUNWAY 22 CULVERT IMPROVEMENTS INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM AND BOX CULVERT AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		14,400		
		TOTAL FUNDING	TRN	3,600E		E
			TRN	10,800N		N
3.	A23P	HONOLULU INTERNATIONAL AIRPORT, TAXIWAY Z STRUCTURAL IMPROVEMENTS, OAHU				
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO TAXIWAY Z AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).				
		DESIGN		5,000		
		CONSTRUCTION				53,500
		TOTAL FUNDING	TRN	1,250E		E
			TRN	3,750N		37,500N
			TRN	X		16,000X
4.	A10C	HONOLULU INTERNATIONAL AIRPORT, ROADWAY IMPROVEMENTS, OAHU				
		CONSTRUCTION TO REPAVE AOOLELE STREET FROM LAGOON DRIVE TO NIMITZ HIGHWAY AND LAGOON DRIVE FROM AOOLELE STREET TO IOLANA STREET.				
		CONSTRUCTION		7,740		
		TOTAL FUNDING	TRN	7,740E		E
5.		HONOLULU INTERNATIONAL AIRPORT, NOISE MONITORING SYSTEM UPGRADE, OAHU				
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE EXISTING NOISE MONITORING SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		35		
		CONSTRUCTION				350
		TOTAL FUNDING	TRN	35E		88E
			TRN	N		262N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
6.	A37F	HONOLULU INTERNATIONAL AIRPORT, LOADING BRIDGE MODERNIZATION, OAHU				
		CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES AND REMOVAL OF EXISTING LOADING BRIDGES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION				9,450
		TOTAL FUNDING	TRN	E		2,700 E
			TRN	N		6,750 N
7.	A35D	HONOLULU INTERNATIONAL AIRPORT, OVERSEAS TERMINAL SIGNAGE AND SIDEWALK IMPROVEMENTS, OAHU				
		CONSTRUCTION FOR SIGNAGE AND SIDEWALK IMPROVEMENTS AT THE OVERSEAS TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		11,300		
		TOTAL FUNDING	TRN	2,825 E		E
			TRN	8,475 N		N
8.	A18A	HONOLULU INTERNATIONAL AIRPORT, NEW RAMP CONTROL OFFICE, OAHU				
		CONSTRUCTION FOR A NEW RAMP CONTROL OFFICE.				
		CONSTRUCTION		685		
		TOTAL FUNDING	TRN	685 E		E
9.	A20C	HONOLULU INTERNATIONAL AIRPORT, WIKI WIKI SHUTTLE STATION IMPROVEMENTS, OAHU				
		CONSTRUCTION FOR IMPROVEMENTS TO THE TWO WIKI WIKI SHUTTLE STATIONS LOCATED ON THE 3RD LEVEL OF THE OVERSEAS TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		3,852		
		TOTAL FUNDING	TRN	1,152 E		E
			TRN	2,700 N		N
10.	A41M	HONOLULU INTERNATIONAL AIRPORT, TERMINAL FACILITY IMPROVEMENTS, OAHU				
		DESIGN AND CONSTRUCTION TO RENOVATE THE TERMINAL AREA TO INCORPORATE THE CURRENT THEME OF THE AIRPORT TO CREATE A POSITIVE IMAGE TO PASSENGERS.				
		DESIGN		3,000		
		CONSTRUCTION				24,400
		TOTAL FUNDING	TRN	3,000 E		24,400 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

TRN104 - GENERAL AVIATION

11. A71C KALAELOA AIRPORT, FACILITY IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, T-HANGAR, AVIATION FUEL SYSTEMS AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		1,600	
CONSTRUCTION		8,525	8,525
TOTAL FUNDING	TRN	2,375 B	775 B
	TRN	7,750 N	7,750 N

TRN111 - HILO INTERNATIONAL AIRPORT

12. B10M HILO INTERNATIONAL AIRPORT, ARFF FACILITY IMPROVEMENTS, HAWAII

CONSTRUCTION FOR THE RENOVATION OF THE AIRCRAFT RESCUE AND FIRE FIGHTING STATION, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROGRAM IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION			9,450
TOTAL FUNDING	TRN	E	900 E
	TRN	N	8,550 N

13. B10X HILO INTERNATIONAL AIRPORT, LAND ACQUISITION, HAWAII

LAND ACQUISITION OF A 2.847 ACRE PARCEL.

LAND		2,500	
TOTAL FUNDING	TRN	2,500 B	B

14. B10B HILO INTERNATIONAL AIRPORT, CARGO BUILDING AND RAMP, HAWAII

CONSTRUCTION FOR ADDITIONAL CARGO FACILITIES WITHIN THE AIRPORT INCLUDING A CARGO RAMP AND OTHER RELATED IMPROVEMENTS.

CONSTRUCTION		14,000	
TOTAL FUNDING	TRN	14,000 E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
TRN131 - KAHULUI AIRPORT					
15.	D04E	KAHULUI AIRPORT, RE-ROOF TERMINAL BUILDINGS, MAUI			
		DESIGN AND CONSTRUCTION FOR THE RE-ROOFING OF THE TERMINAL BUILDINGS AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		1,500	
		CONSTRUCTION			6,000
		TOTAL FUNDING	TRN	1,500B	B
			TRN	E	6,000E
16.	D04F	KAHULUI AIRPORT, PASSENGER INFORMATION SYSTEM IMPROVEMENTS, MAUI			
		CONSTRUCTION OF PASSENGER INFORMATION SYSTEM IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION		2,500	
		TOTAL FUNDING	TRN	2,500E	E
17.	D04S	KAHULUI AIRPORT, LOADING BRIDGE MODERNIZATION, MAUI			
		CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES AND REMOVAL OF EXISTING LOADING BRIDGES.			
		CONSTRUCTION		9,620	
		TOTAL FUNDING	TRN	9,620E	E
18.	D04D	KAHULUI AIRPORT, TERMINAL IMPROVEMENTS, MAUI			
		DESIGN AND CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING CONFERENCE ROOMS, FAMILY RESTROOMS, HOLDROOMS, SECURITY BADGING OFFICE IMPROVEMENTS, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		300	
		CONSTRUCTION		2,700	
		TOTAL FUNDING	TRN	3,000E	E
19.	D04U	KAHULUI AIRPORT, LAND ACQUISITION, MAUI			
		LAND ACQUISITION OF A PARCEL NEAR THE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		15,500	
		TOTAL FUNDING	TRN	3,875E	E
			TRN	11,625N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
TRN135 - KAPALUA AIRPORT					
20.		KAPALUA AIRPORT, MAUI			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR SOLAR POWERED RUNWAY LIGHTS AND HARDWARE FOR EMERGENCY USE AT KAPALUA AIRPORT.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			110
		EQUIPMENT			1
		TOTAL FUNDING	TRN	E	113E
TRN151 - LANAI AIRPORT					
21.	D70H	LANAI AIRPORT, RUNWAY SAFETY AREA IMPROVEMENTS, LANAI			
		CONSTRUCTION OF THE RUNWAY SAFETY AREA IMPROVEMENTS INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM, CONSTRUCTION OF NEW SERVICE ROAD, RELOCATION OF PERIMETER FENCING AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		35,111	
		TOTAL FUNDING	TRN	2,825B	B
			TRN	32,286N	N
TRN161 - LIHUE AIRPORT					
22.	E10B	LIHUE AIRPORT, AIRFIELD IMPROVEMENTS, KAUAI			
		DESIGN AND CONSTRUCTION FOR AIRFIELD IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		2,400	
		CONSTRUCTION			21,600
		TOTAL FUNDING	TRN	2,400E	1,080E
			TRN	N	20,520N
23.	E030	LIHUE AIRPORT, AHUKINI LANDFILL RESTORATION, KAUAI			
		CONSTRUCTION FOR THE RESTORATION OF THE AHUKINI LANDFILL AT LIHUE AIRPORT.			
		CONSTRUCTION		2,500	
		TOTAL FUNDING	TRN	2,500E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
24.	E03U	LIHUE AIRPORT, TICKET LOBBY AND HOLDROOM IMPROVEMENTS, KAUAI			
		DESIGN AND CONSTRUCTION FOR TICKET LOBBY AND HOLDROOM IMPROVEMENTS.			
		DESIGN		800	
		CONSTRUCTION			8,300
		TOTAL FUNDING TRN		800E	8,300E
TRN195 - AIRPORTS ADMINISTRATION					
25.		AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECT STAFF COSTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORT DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)			
		PLANS		250	250
		DESIGN		900	900
		CONSTRUCTION		1,400	1,400
		TOTAL FUNDING TRN		2,450B	2,450B
				TRN	TRN
				100X	100X
26.	F05I	AIRFIELD IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR AIRFIELD IMPROVEMENTS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	1,000
		CONSTRUCTION		11,000	11,000
		TOTAL FUNDING TRN		4,500B	4,500B
				TRN	TRN
				7,500N	7,500N
27.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE			
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.			
		DESIGN		1,000	1,000
		CONSTRUCTION		2,500	2,500
		TOTAL FUNDING TRN		3,500B	3,500B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
28.	F04J	AIRPORT PLANNING STUDY, STATEWIDE				
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, NOISE MONITORING STUDIES, NOISE COMPATIBILITY STUDIES, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS.				
		PLANS		1,000		1,000
		TOTAL FUNDING TRN		1,000B		1,000B
29.	F05N	RADIO COMMUNICATIONS IMPROVEMENTS, STATEWIDE				
		CONSTRUCTION FOR NEW DIGITAL RADIO INFRASTRUCTURE UPGRADES INCLUDING ANTENNAS, SYSTEM WATCH TERMINALS, FLASH UPGRADES, WIRING AND NETWORKING DIGITAL RADIO RECORDERS, AND OTHER RELATED IMPROVEMENTS AT STATEWIDE AIRPORTS.				
		CONSTRUCTION				1,400
		TOTAL FUNDING TRN		B		1,400B
TRN311 - HILO HARBOR						
30.	L16	MITIGATION AT HILO HARBOR, HAWAII				
		DESIGN AND CONSTRUCTION TO MITIGATE ENVIRONMENTAL MEASURES AT HILO HARBOR.				
		DESIGN		150		
		CONSTRUCTION		600		
		TOTAL FUNDING TRN		750B		B
TRN331 - KAHULUI HARBOR						
31.		KAHULUI HARBOR, MAUI				
		PLANS, DESIGN AND CONSTRUCTION OF A PROTRUDING PIER STRUCTURE DEDICATED TO FUEL TRANSFER.				
		PLANS		1		
		DESIGN		1		
		CONSTRUCTION		48,398		
		TOTAL FUNDING TRN		48,400E		E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
TRN395 - HARBORS ADMINISTRATION					
32.	I21	HMP HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT HARBOR MODERNIZATION PLAN PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF HARBOR MODERNIZATION PLAN CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		1,735	1,735
		TOTAL FUNDING TRN		1,735E	1,735E
33.	I13	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSULTANT SERVICES FOR CONSTRUCTION PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		CONSTRUCTION		1,500	
		TOTAL FUNDING TRN		1,500B	B
34.	I06	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE			
		DESIGN FOR CONSULTANT SERVICES DURING THE DESIGN OF CAPITAL PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		DESIGN		200	200
		TOTAL FUNDING TRN		200B	200B
35.	I20	HMP CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION OF HARBOR MODERNIZATION PLAN PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		CONSTRUCTION		2,500	
		TOTAL FUNDING TRN		2,500E	E
36.	I01	HARBOR PLANNING, STATEWIDE			
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.			
		PLANS		1,000	
		TOTAL FUNDING TRN		1,000B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
37.	I22	HMP PROGRAMMATIC MANAGEMENT SUPPORT, STATEWIDE				
		PLANS FOR CONSULTANT SERVICES DURING PLANS, DESIGN AND CONSTRUCTION OF HARBORS MODERNIZATION PLAN PROJECTS AT HARBOR FACILITIES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. THIS IS A HARBOR MODERNIZATION PROJECT.				
		PLANS		5,001		
		TOTAL FUNDING	TRN	5,000E		E
			TRN	1N		N
38.	I15	SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE				
		PLANS, DESIGN AND CONSTRUCTION FOR SECURITY SYSTEM IMPROVEMENTS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS		2		
		DESIGN		2		
		CONSTRUCTION		5,000		
		TOTAL FUNDING	TRN	1,002B		B
			TRN	4,002N		N
39.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		250		250
		CONSTRUCTION		1,000		1,000
		TOTAL FUNDING	TRN	1,250B		1,250B
40.	I05	MISCELLANEOUS IMPROVEMENTS TO PORT FACILITIES, OAHU				
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, MARITIME-INDUSTRIAL FACILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		250		250
		CONSTRUCTION		1,000		1,000
		TOTAL FUNDING	TRN	1,250B		1,250B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
41.	I19	BOLLARD IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR BOLLARD IMPROVEMENTS, STATEWIDE.			
		DESIGN		500	
		CONSTRUCTION		800	800
		TOTAL FUNDING	TRN	1,300 B	800 B
TRN501 - OAHU HIGHWAYS					
42.	S344	MISCELLANEOUS PERMANENT BEST MANAGEMENT PRACTICES, OAHU			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR PERMANENT BEST MANAGEMENT PRACTICE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF STRUCTURAL AND NATURAL BEST MANAGEMENT PRACTICES AT VARIOUS LOCATIONS ON OAHU.			
		LAND		150	
		DESIGN		520	
		CONSTRUCTION		30	1,640
		TOTAL FUNDING	TRN	700 E	1,640 E
43.	S319	PEARL CITY, WAIANAE, AND KANEOHE BASEYARDS WASHDOWN RACKS, OAHU			
		CONSTRUCTION FOR INSTALLING WASHDOWN RACKS TO INCLUDE A WATER RECYCLING UNIT, STEAM PRESSURE WASHERS, AND A CONCRETE PAD FOR COMPLIANCE WITH THE DEPARTMENT OF HEALTH REGULATIONS AND THE CLEAN WATER ACT.			
		CONSTRUCTION		500	
		TOTAL FUNDING	TRN	500 E	E
44.	S318	HIGHWAY LIGHTING REPLACEMENT AT VARIOUS LOCATIONS, OAHU			
		DESIGN AND CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING HIGHWAY LIGHTING SYSTEM ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			150
		CONSTRUCTION			8,800
		TOTAL FUNDING	TRN	E	1,910 E
			TRN	N	7,040 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013	
45.	S301	FARRINGTON HIGHWAY, MAKAHA BRIDGES NO. 3 AND NO. 3A REPLACEMENT, OAHU				
		CONSTRUCTION FOR THE REPLACEMENT OF BRIDGES NO. 3 AND 3A IN THE VICINITY OF MAKAHA BEACH PARK TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION			1,700	
		TOTAL FUNDING	TRN		340 E	E
			TRN		1,360 N	N
46.	S296	KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT AND/OR REHABILITATION, OAHU				
		CONSTRUCTION FOR REPLACEMENT AND/OR REHABILITATION OF KAIPAPAU STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION			18,500	
		TOTAL FUNDING	TRN		3,700 E	E
			TRN		14,800 N	N
47.	S317	KAMEHAMEHA HIGHWAY, REHABILITATION OF WAIPILOPILO STREAM BRIDGE, OAHU				
		LAND ACQUISITION FOR REHABILITATION OF A CONCRETE TEE-BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF HAUULA TO INCLUDE BRIDGE RAILINGS, WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND			250	
		TOTAL FUNDING	TRN		50 E	E
			TRN		200 N	N
48.	S348	FARRINGTON HIGHWAY, ULEHAWA STREAM BRIDGE REHABILITATION, OAHU				
		LAND ACQUISITION AND DESIGN FOR THE REHABILITATION OF ULEHAWA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND			300	
		DESIGN			1,500	
		TOTAL FUNDING	TRN		360 E	E
			TRN		1,440 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
49.	S328	KAMEHAMEHA HIGHWAY, REHABILITATION AND/OR REPLACEMENT OF MAKAAU STREAM BRIDGE, OAHU				
		LAND ACQUISITION AND DESIGN FOR THE REHABILITATION AND/OR REPLACEMENT OF MAKAAU STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND			250	
		DESIGN			450	
		TOTAL FUNDING	TRN		140E	E
			TRN		560N	N
50.	S314	KAMEHAMEHA HIGHWAY, UPPER POAMOHO STREAM BRIDGE REPLACEMENT, OAHU				
		LAND ACQUISITION FOR REPLACEMENT OF A MULTI-GIRDER REINFORCED CONCRETE BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF WAHIAWA TO INCLUDE BRIDGE RAILINGS, PEDESTRIAN WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND			400	
		TOTAL FUNDING	TRN		80E	E
			TRN		320N	N
51.	S315	KAMEHAMEHA HIGHWAY, REHABILITATION AND/OR REPLACEMENT OF LAIELOA STREAM BRIDGE, OAHU				
		CONSTRUCTION FOR REHABILITATION AND/OR REPLACEMENT OF A CONCRETE SLAB BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF LAIE TO INCLUDE BRIDGE RAILINGS, WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION			8,600	
		TOTAL FUNDING	TRN		1,720E	E
			TRN		6,880N	N
52.	S346	INTERSTATE ROUTE H-1, KAPALAMA CANAL BRIDGE REHABILITATION, OAHU				
		DESIGN FOR THE REHABILITATION OF KAPALAMA CANAL BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN			800	
		TOTAL FUNDING	TRN		160E	E
			TRN		640N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
53.	S349	KAMEHAMEHA HIGHWAY, WAIALEE STREAM BRIDGE REPLACEMENT, OAHU			
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF WAIALEE STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND DESIGN		890	500
		TOTAL FUNDING	TRN	178E	100E
			TRN	712N	400N
54.	S284	INTERSTATE ROUTES H-1 AND H-2, DESTINATION SIGN UPGRADE/REPLACEMENT, OAHU			
		DESIGN AND CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING DESTINATION SIGNS AND SIGN SUPPORT STRUCTURES ON INTERSTATE ROUTES H-1 AND H-2. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			350
		CONSTRUCTION			2,500
		TOTAL FUNDING	TRN	E	570E
			TRN	N	2,280N
55.	S313	INTERSTATE ROUTE H-1, ADDITION AND/OR MOD. OF FREEWAY ACCS. MAKAKILO TO PALAILAI IC, OAHU			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION TO IMPROVE AND/OR MODIFY THE MAKAKILO AND PALAILAI INTERCHANGES AND CONSTRUCT A NEW INTERCHANGE (KAPOLEI INTERCHANGE). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND DESIGN			408
		CONSTRUCTION		23,900	500
		TOTAL FUNDING	TRN	5,090E	91E
			TRN	18,810N	817N
56.		INTERSTATE ROUTE H-3, JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU			
		DESIGN AND CONSTRUCTION FOR A DIVIDED HIGHWAY FROM JUNCTION H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		25	113
		CONSTRUCTION		225	1,017
		TOTAL FUNDING	TRN	25E	113E
			TRN	225N	1,017N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
57.		FLOOD MITIGATION, LUALUALEI VALLEY AND FARRINGTON HIGHWAY, OAHU			
		DESIGN AND CONSTRUCTION FOR FLOOD MITIGATION EFFORTS ON FARRINGTON HIGHWAY BETWEEN MAILI AND NANAKULI, OAHU.			
		DESIGN		500	
		CONSTRUCTION		7,500	
		TOTAL FUNDING TRN		8,000E	E
58.		KAHEKILI AND KAMEHAMEHA HIGHWAYS, OAHU			
		DESIGN AND CONSTRUCTION OF MULTI-USE PATHS ALONG KAHEKILI BEGINNING AT THE INTERSECTION WITH HAIKU ROAD, ALONG KAMEHAMEHA HIGHWAY UP TO WAIHOLE VALLEY.			
		DESIGN		300	
		CONSTRUCTION		1,300	
		TOTAL FUNDING TRN		1,600E	E
59.		KALANIANAOLE HIGHWAY, OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO UPGRADE CROSSWALK.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		298	
		TOTAL FUNDING TRN		300E	E
60.		FARRINGTON HIGHWAY, LAHILAHI STREET, OAHU			
		DESIGN AND CONSTRUCTION FOR FLOOD MITIGATION SYSTEM.			
		DESIGN		200	
		CONSTRUCTION		800	
		TOTAL FUNDING TRN		1,000E	E
61.		KAMEHAMEHA HIGHWAY, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO KAMEHAMEHA HIGHWAY, INCLUDING SIGNAL OPERATION AND MONITORING IMPROVEMENTS PHASE II, A FEASIBILITY STUDY FOR BOTTLENECK INTERSECTIONS, UTILITY UNDERGROUNDING, PEARL HARBOR HISTORIC SITE GATEWAY PROJECT, AND HARS DEMONSTRATION PROGRAM.			
		DESIGN		50	
		CONSTRUCTION		200	
		TOTAL FUNDING TRN		250E	E
62.		KAMEHAMEHA HIGHWAY AND KAHEKILI HIGHWAY, OAHU			
		DESIGN AND CONSTRUCTION FOR CLEAN UP, TREE TRIMMING, INSTALLATION OF CAMERAS, BEAUTIFICATION, AND PLANTING.			
		DESIGN			110
		CONSTRUCTION			1,000
		TOTAL FUNDING TRN	E		1,110E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
TRN511 - HAWAII HIGHWAYS					
63.	T119	WAIMEA AND HILO BASEYARDS IMPROVEMENTS, HAWAII			
		CONSTRUCTION TO PROVIDE WASTEWATER IMPROVEMENTS FOR THE WAIMEA BASEYARD AND A SEPTIC TANK SYSTEM TO THE HILO BASEYARD NECESSARY TO MEET DEPARTMENT OF HEALTH COMPLIANCE AND ENVIRONMENTAL PROTECTION AGENCY (EPA) COMPLIANCE.			
		CONSTRUCTION		250	
		TOTAL FUNDING	TRN	250 E	E
64.	T145	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, HAWAII			
		LAND ACQUISITION AND CONSTRUCTION FOR ROCKFALL/SLOPE PROTECTION, AND SLOPE AND/OR ROADWAY STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS ON HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		125	
		CONSTRUCTION		3,000	
		TOTAL FUNDING	TRN	625 E	E
			TRN	2,500 N	N
65.	T110	HAWAII BELT ROAD ROCKFALL PROTECTION AT MAULUA, LAUPAHOEHOE, AND KAAWALII, HAWAII			
		DESIGN FOR SLOPE PROTECTION ALONG ROUTE 19, HAWAII BELT ROAD IN THE VICINITY OF MAULUA GULCH, LAUPAHOEHOE GULCH, AND KAAWALII GULCH. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			2,000
		TOTAL FUNDING	TRN	E	400 E
			TRN	N	1,600 N
66.	T146	HAWAII BELT ROAD, REHABILITATION OF UMAUMA STREAM BRIDGE, HAWAII			
		CONSTRUCTION FOR THE REHABILITATION OF UMAUMA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		20,000	
		TOTAL FUNDING	TRN	4,000 E	E
			TRN	16,000 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
67.	T144	HAWAII BELT ROAD, REPLACEMENT OF PAHOEHOE STREAM BRIDGE, HAWAII				
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF A CONCRETE ARCH-DECK BRIDGE ON HAWAII BELT ROAD (ROUTE 19) ON THE BIG ISLAND IN THE VICINITY OF PAPAIKOU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND DESIGN				1,100
		TOTAL FUNDING	TRN	50		
			TRN	10E		220E
				40N		880N
68.	T147	HAWAII BELT ROAD, KAALAU BRIDGE REPLACEMENT, HAWAII				
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF KAALAU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND DESIGN				600
		TOTAL FUNDING	TRN			1,200
			TRN	E		360E
				N		1,440N
69.	T148	HAWAII BELT ROAD, KAPEHU BRIDGE REPLACEMENT, HAWAII				
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF KAPEHU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND DESIGN				700
		TOTAL FUNDING	TRN			1,200
			TRN	E		380E
				N		1,520N
70.	T126	KUAKINI HWY ROADWAY AND DRAINAGE IMPROVEMENTS, VICINITY OF KAMEHAMEHA III ROAD, HAWAII				
		CONSTRUCTION FOR BUILDING UP PAVEMENT CROSS SLOPE TO IMPROVE DRAINAGE AND OTHER INCIDENTAL IMPROVEMENTS.				
		CONSTRUCTION				3,400
		TOTAL FUNDING	TRN			3,400E
						E
71.	T149	KOHALA MOUNTAIN ROAD DRAINAGE IMPROVEMENTS, HAWAII				
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS IN THE VICINITY OF M.P. 10.60. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION				3,000
		TOTAL FUNDING	TRN			600E
			TRN	E		2,400N
				N		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)			
				FISCAL YEAR	M	FISCAL YEAR	M
				2011-2012	F	2012-2013	F
72.	T136	HAWAII BELT ROAD DRAINAGE IMPROVEMENTS, VICINITY OF HAKALAU BRIDGE, HAWAII					
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING INSTALLING A DRAINAGE SPILLWAY AND BOX CULVERTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			2,000		
		TOTAL FUNDING	TRN		400E		E
			TRN		1,600N		N
73.	T132	VOLCANO ROAD INTERSECTION AND DRAINAGE IMPROVEMENTS, VICINITY OF KULANI ROAD, HAWAII					
		CONSTRUCTION FOR LEFT TURN LANES AND DRAINAGE IMPROVEMENTS AT THE KULANI ROAD INTERSECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			2,800		
		TOTAL FUNDING	TRN		560E		E
			TRN		2,240N		N
74.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, HAWAII					
		CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			200		
		TOTAL FUNDING	TRN		200E		E
75.	T141	QUEEN KAAHUMANU HIGHWAY IMPROVEMENTS, KEAHOLE AIRPORT TO KAWAIHAE HARBOR, HAWAII					
		PLANS FOR IMPROVEMENTS TO QUEEN KAAHUMANU HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS				400	
		TOTAL FUNDING	TRN			80E	
			TRN			N	320N
76.		KUPULAU ROAD EXTENSION, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION TO REDUCE CONGESTION OF TRAFFIC ON KOMOHANA STREET.					
		PLANS			250		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		DESIGN		500	
		CONSTRUCTION		2,000	
		TOTAL FUNDING	TRN	2,750 E	E
TRN531 - MAUI HIGHWAYS					
77.	V075	HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI			
		CONSTRUCTION TO MITIGATE ROCKFALLS AND POTENTIAL LANDSLIDE AREAS ALONG THE SLOPES OF ROUTE 360 HANA HIGHWAY AT VARIOUS LOCATIONS.			
		CONSTRUCTION		4,382	
		TOTAL FUNDING	TRN	4,382 E	E
78.	W0008	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI			
		DESIGN AND CONSTRUCTION TO BUILD ASPHALT CONCRETE PAVED SHOULDERS AND INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		75	
		CONSTRUCTION		750	750
		TOTAL FUNDING	TRN	225 E	150 E
			TRN	600 N	600 N
79.	V084	HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI			
		CONSTRUCTION FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER FACILITIES ON ROUTE 360 HANA HIGHWAY.			
		CONSTRUCTION		840	
		TOTAL FUNDING	TRN	840 E	E
80.	V094	HONOAPIILANI HIGHWAY, REPLACEMENT OF HONOLUA BRIDGE, MAUI			
		LAND ACQUISITION FOR REPLACEMENT OF A CONCRETE TEE-BEAM BRIDGE ON HONOAPIILANI HIGHWAY IN THE VICINITY OF HONOLUA BAY TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		425	
		TOTAL FUNDING	TRN	85 E	E
			TRN	340 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
81.	W014	KAMEHAMEHA V HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF MILE POST 12.5, MOLOKAI			
		CONSTRUCTION TO UPGRADE THE EXISTING CULVERT, OTHER DRAINAGE FACILITIES, SHOULDERS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 12.5.			
		CONSTRUCTION		450	
		TOTAL FUNDING TRN		450E	E
82.	V099	HANA HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF HOOLAWA BRIDGE, MAUI			
		DESIGN AND CONSTRUCTION TO REGRADE THE ROADWAY TO REDIRECT RUNOFF FROM THE TRAVEL LANES AND SHOULDERS AND TOWARDS THE EXISTING CULVERT.			
		DESIGN		80	
		CONSTRUCTION			1,200
		TOTAL FUNDING TRN		80E	1,200E
83.	V098	KAHEKILI HIGHWAY DRAINAGE IMPROVEMENTS AT WAIHEE TOWN, MAUI			
		CONSTRUCTION OF A DRAINAGE FACILITY ON KAHEKILI HIGHWAY NEAR WAIHEE TOWN.			
		CONSTRUCTION		75	
		TOTAL FUNDING TRN		75E	E
84.	V103	HANA HIGHWAY BRIDGE PRESERVATION PLAN, MAUI			
		PLANS FOR DEVELOPING A BRIDGE PRESERVATION PLAN FOR HANA HIGHWAY IN THE VICINITY OF THE HANA PRESERVATION DISTRICT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,600	
		TOTAL FUNDING TRN		320E	E
				1,280N	N
85.	V107	KAHULUI BASEYARD IMPROVEMENTS, MAUI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR KAHULUI BASEYARD IMPROVEMENTS.			
		DESIGN		75	
		CONSTRUCTION			700
		EQUIPMENT			100
		TOTAL FUNDING TRN		75E	800E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
86.	V051	HONOAPIILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO LAUNIUPOKO, MAUI			
		LAND ACQUISITION AND CONSTRUCTION FOR A NEW ALIGNMENT OF HONOAPIILANI HIGHWAY FROM LAHAINALUNA ROAD TO THE VICINITY OF LAUNIUPOKO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			50
		CONSTRUCTION		32,000	
		TOTAL FUNDING	TRN	13,000E	10E
			TRN	17,500N	40N
			TRN	1,500S	S
87.	V100	HANA HIGHWAY IMPROVEMENTS, VICINITY OF MILEPOST 28.1, MAUI			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR ROADWAY WIDENING AND/OR REALIGNMENT AND OTHER IMPROVEMENTS ALONG HANA HIGHWAY IN THE VICINITY OF MILEPOST 28.1.			
		LAND		50	
		DESIGN		105	
		CONSTRUCTION			675
		TOTAL FUNDING	TRN	155E	675E
88.	V089	HANA HIGHWAY IMPROVEMENTS, UAKEA ROAD TO KEAWA PLACE, MAUI			
		CONSTRUCTION FOR WIDENING THE EXISTING ROADWAY AND CONSTRUCT SAFETY IMPROVEMENTS.			
		CONSTRUCTION		290	
		TOTAL FUNDING	TRN	290E	E
89.	V083	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, MAUI			
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		DESIGN		125	
		CONSTRUCTION		2,690	1,000
		TOTAL FUNDING	TRN	2,815E	1,000E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
90.	V063	KAHULUI AIRPORT ACCESS ROAD, MAUI			
		CONSTRUCTION FOR A PORTION OF THE NEW ACCESS ROAD TO KAHULUI AIRPORT FROM THE VICINITY OF PUUNENE AVENUE TO HANA HIGHWAY. INCLUDES AN AT-GRADE INTERSECTION AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, HIGHWAY LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			9,525
		TOTAL FUNDING	TRN	E	1,905E
			TRN	N	7,620N
91.		HALEAKALA HIGHWAY IMPROVEMENTS, MAUI			
		CONSTRUCTION TO INSTALL RIGHT TURN LANE ON WEST-BOUND HALEAKALA HIGHWAY, INSTALL WALKWAYS AND PAVED SHOULDERS AND/OR SIDEWALKS FROM INTERSECTION TO KING KEKAULIKE HIGH SCHOOL ENTRANCES, AND TO MAKE TRAFFIC SIGNAL IMPROVEMENTS, SIGNAGE, MARKINGS, AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION		1,500	
		TOTAL FUNDING	TRN	1,500E	E
TRN561 - KAUAI HIGHWAYS					
92.	X051	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI			
		CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			400
		TOTAL FUNDING	TRN	E	80E
			TRN	N	320N
93.	X134	KUHIO HIGHWAY, SLOPE STABILIZATION AT LUMAHAI HILLSIDE, KAUAI			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR SLOPE STABILIZATION AT LUMAHAI HILLSIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND DESIGN		150	
				400	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	550E	400E
			TRN	N	1,600N
94.	X128	KUHIO HIGHWAY, REPLACEMENT OF WAIOLI, WAIPA, AND WAIKOKO STREAM BRIDGES, KAUAI			
		LAND ACQUISITION FOR THE REPLACEMENT OF WAIOLI STREAM BRIDGE, WAIPA STREAM BRIDGE, AND WAIKOKO STREAM BRIDGE ON KUHIO HIGHWAY, ROUTE 560. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			250
		TOTAL FUNDING	TRN	E	50E
			TRN	N	200N
95.	X127	KAPULE HWY/RICE ST/WAAPA RD IMPROVEMENTS AND STRENGTHENING/WIDENING OF NAWILIWILI BRIDGE, KAUAI			
		LAND ACQUISITION FOR THE IMPROVEMENT OF KAPULE HIGHWAY, RICE STREET AND WAAPA ROAD; AND STRENGTHENING/WIDENING OF NAWILIWILI BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			150
		TOTAL FUNDING	TRN	E	30E
			TRN	N	120N
96.	X124	KUHIO HIGHWAY, KAPAIA BRIDGE REPLACEMENT, KAUAI			
		CONSTRUCTION FOR REPLACEMENT OF A MULTI-TEE BEAM REINFORCED CONCRETE GIRDER BRIDGE ON KUHIO HIGHWAY IN THE VICINITY OF KAPAIA TO INCLUDE PEDESTRIAN WALKWAYS, BRIDGE RAILINGS AND APPROACHES, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			8,650
		TOTAL FUNDING	TRN	E	1,730E
			TRN	N	6,920N
97.	X123	WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MILE POST 0 TO MILE POST 14, KAUAI			
		CONSTRUCTION FOR PAVED SHOULDERS, INSTALLING GUARDRAILS, PAVEMENT MARKINGS AND SIGNS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 0 TO MILE POST 14. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,000	
		TOTAL FUNDING	TRN	1,200E	E
			TRN	4,800N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
98.	X007	KUHIO HIGHWAY IMPROVEMENTS, HANAMAULU TO KAPAA, KAUAI				
		PLANS AND CONSTRUCTION FOR A NEW KAPAA BYPASS AND/OR WIDEN SECTIONS OF KUHIO HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS			1,000	
		CONSTRUCTION			22,900	
		TOTAL FUNDING	TRN		7,500E	E
			TRN		16,400N	N
99.	X006	KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI				
		CONSTRUCTION FOR WIDENING OF KAUMUALII HIGHWAY, LIHUE TO WEST OF MALUHIA ROAD, FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION			6,900	
		TOTAL FUNDING	TRN		800E	E
			TRN		1,600N	N
			TRN		4,500S	S
100.	X121	KUHIO HIGHWAY, REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3, KAUAI				
		DESIGN FOR REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3. PROJECT WILL CONSTRUCT BRIDGE APPROACHES, DETOUR ROADS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN			1,000	
		TOTAL FUNDING	TRN		1,000E	E
101.	X112	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, KAUAI				
		CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.				
		CONSTRUCTION			2,380	2,500
		TOTAL FUNDING	TRN		2,380E	2,500E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
102.	X135	NAWILIWILI ROAD IMPROVEMENTS, KANANI STREET TO KAUMUALII HIGHWAY, KAUAI			
		DESIGN AND CONSTRUCTION FOR NAWILIWILI ROAD IMPROVEMENTS, INCLUDING PAVEMENT RECONSTRUCTION, SIDEWALKS, AND TRAFFIC SIGNALS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		400	
		CONSTRUCTION			7,500
		TOTAL FUNDING	TRN	80E	1,500E
			TRN	320N	6,000N
103.		ROADWAY RECONSTRUCTION, MILE MARKER 18 TO KALALAU LOOKOUT, KAUAI			
		DESIGN AND CONSTRUCTION TO RENOVATE AND RESURFACE ROADWAY, INCLUDING DRAINAGE IMPROVEMENTS.			
		DESIGN			800
		CONSTRUCTION			7,200
		TOTAL FUNDING	TRN	E	8,000E
104.		WAINIHA BRIDGE REPLACEMENT PROJECT, KAUAI			
		CONSTRUCTION FOR THE BRIDGE REPLACEMENT PROJECT.			
		CONSTRUCTION		10,000	
		TOTAL FUNDING	TRN	10,000E	E
TRN595 - HIGHWAYS ADMINISTRATION					
105.	X225	HIGHWAY DIVISION CAPITAL IMPROVEMENTS PROGRAM PROJECT STAFF COSTS, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR COSTS RELATED TO WAGES & FRINGES FOR PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CIP PROJECTS FOR DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CIP PROJECT RELATED POSITIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		1	1
		CONSTRUCTION		17,997	17,997
		TOTAL FUNDING	TRN	12,000B	12,000B
			TRN	6,000N	6,000N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
106.	X227	ROCKFALL PROTECTIONS/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE				
		CONSTRUCTION FOR ROCKFALL/SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE. THIS PRACTICE IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION				21,000
		TOTAL FUNDING	TRN	E		4,200 E
			TRN	N		16,800 N
107.	X224	HIGHWAY SHORELINE PROTECTION, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR SHORELINE PROTECTION IMPROVEMENTS OF EXISTING STATE HIGHWAY FACILITIES, INCLUDING SHORELINE PROTECTION STRUCTURES, RELOCATION AND REALIGNMENT OF THE HIGHWAY AND BEACH FILL/NOURISHMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN			3,065	350
		CONSTRUCTION			5,650	5,300
		TOTAL FUNDING	TRN		4,195 E	1,410 E
			TRN		4,520 N	4,240 N
108.	X097	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS AT VARIOUS LOCATIONS.				
		DESIGN				200
		CONSTRUCTION			1,360	1,150
		TOTAL FUNDING	TRN		1,360 E	1,350 E
109.	X241	MAJOR PAVEMENT IMPROVEMENTS, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR MAJOR PAVEMENT RECONSTRUCTION, RESURFACING, RESTORATION AND/OR REHABILITATION ALONG STATE ROUTES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN			500	
		CONSTRUCTION			12,500	13,000
		TOTAL FUNDING	TRN		12,000 E	12,000 E
			TRN		1,000 N	1,000 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
110.	X235	MOTOR CARRIER SAFETY AND HIGHWAY SAFETY OFFICE FACILITY, STATEWIDE				
		CONSTRUCTION TO RENOVATE AND REFURBISH EXISTING BUILDING STRUCTURES AND INSTALL MISCELLANEOUS SITE IMPROVEMENTS UNDER THE WAIMALU VIADUCT.				
		CONSTRUCTION		1,100		
		TOTAL FUNDING	TRN	1,100E		E
111.	X099	HIGHWAY PLANNING, STATEWIDE				
		PLANS FOR FEDERAL AID AND NON-FEDERAL AID PROGRAMS AND PROJECTS THAT INCLUDE ROADWAY CLASSIFICATION, DATA COLLECTION, LONG- AND MID-RANGE PLANNING, TRANSPORTATION NEEDS STUDIES, RESEARCH, HRS 343/NEPA STUDIES, CORRIDOR STUDIES, AND SCOPING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS		4,525		7,875
		TOTAL FUNDING	TRN	905E		1,575E
			TRN	3,620N		6,300N
112.	X098	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		100		250
		CONSTRUCTION		1,350		4,700
		TOTAL FUNDING	TRN	450E		1,190E
			TRN	1,000N		3,760N
113.	X242	STATEWIDE INTELLIGENT TRANSPORTATION SYSTEM (ITS) ARCHITECTURE PLAN, STATEWIDE				
		PLANS FOR DEVELOPING A STATEWIDE INTELLIGENT TRANSPORTATION SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS		1,000		
		TOTAL FUNDING	TRN	200E		E
			TRN	800N		N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
114.	X200	TRAFFIC COUNTING STATIONS AT VARIOUS LOCATIONS, STATEWIDE			
		CONSTRUCTION FOR INSTALLING TRAFFIC DETECTOR LOOPS, ASSOCIATED WIRING, JUNCTION BOXES, CABINETS AND TELEMETRY STATIONS AT VARIOUS LOCATIONS ON STATE ROADWAYS, INCLUDING AUTOMATIC TRAFFIC RECORDERS AND OTHER DATA PROCESSING IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			75
		TOTAL FUNDING	TRN	E	15E
			TRN	N	60N
115.		STUDY ON ALTERNATIVE ACCESS ROAD INTO AND OUT OF LEEWARD COAST, OAHU			
		PLANS FOR AN ALTERNATIVE ACCESS ROAD MAUKA OF FARRINGTON HIGHWAY BEGINNING AT LUALUALEI NAVAL MAGAZINE ROAD TO PROVIDE ACCESS INTO AND OUT OF THE LEEWARD COAST, OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,000	
		TOTAL FUNDING	TRN	200E	E
			TRN	800N	N
116.		ALTERNATIVE ACCESS AND TRAFFIC MITIGATION STUDY FROM MILILANI ON TO THE H-2 FREEWAY, OAHU			
		PLANS FOR AN ALTERNATE ACCESS OR MODIFICATION OF EXISTING ACCESS, AS WELL AS TRAFFIC MITIGATION MEASURES TO PROVIDE ACCESS FROM MILILANI ON TO THE H-2 FREEWAY.			
		PLANS		350	
		TOTAL FUNDING	TRN	350E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
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D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

- 840121 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CONSTRUCTION FUNDS TO PROVIDE STATE MATCH (20%) FOR FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS TO BE TRANSFERRED TO THE WATER POLLUTION CONTROL REVOLVING FUND PURSUANT TO CHAPTER 342D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		18,938	18,938
TOTAL FUNDING	HTH	3,157 C	3,157 C
	HTH	15,781 N	15,781 N

- 840122 SAFE DRINKING WATER REVOLVING FUND, STATEWIDE

CONSTRUCTION FUNDS TO PROVIDE STATE MATCH (20%) FOR FEDERAL CAPITALIZATION GRANTS FOR DRINKING WATER PROJECTS. FUNDS TO BE TRANSFERRED TO THE DRINKING WATER TREATMENT REVOLVING FUND LOAN, PURSUANT TO CHAPTER 340E, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALITY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		16,288	16,288
TOTAL FUNDING	HTH	2,715 C	2,715 C
	HTH	13,573 N	13,573 N

LNR401 - AQUATIC RESOURCES

- HANALEI RIVER, KAUAI

PLANS, DESIGN AND CONSTRUCTION TO UPGRADE, REPAIR AND REINFORCE THE HANALEI RIVER BREACH. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

PLANS		1	
DESIGN		1	
CONSTRUCTION		998	
TOTAL FUNDING	LNR	1,000 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
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LNR402 - NATIVE RESOURCES AND FIRE PROTECTION PROGRAM

4.		LUMP SUM IMPROVEMENTS AT DOFAW FACILITIES FOR NATIVE RESOURCES AND/OR FIRE PROTECTION, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT DOFAW FACILITIES FOR NATIVE RESOURCES AND/OR FIRE PROTECTION, STATEWIDE.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		1,178	2,498
		TOTAL FUNDING LNR		1,180C	2,500C

LNR405 - CONSERVATION AND RESOURCES ENFORCEMENT

5.		LUMP SUM IMPROVEMENTS AT DOCARE OFFICE AND/OR BASEYARD FACILITIES, STATEWIDE			
		CONSTRUCTION FOR VARIOUS IMPROVEMENTS AT DOCARE OFFICE AND/OR BASEYARD FACILITIES, STATEWIDE.			
		CONSTRUCTION		280	120
		TOTAL FUNDING LNR		280C	120C

LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT

6.	G01B	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		2,540	2,540
		TOTAL FUNDING LNR		2,540C	2,540C
7.	G01C	TSUNAMI DAMAGE RESPONSE AT DLNR FACILITIES, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS, REPAIR AND/OR RECONSTRUCT DLNR FACILITIES DAMAGED IN THE MARCH 2011 TSUNAMI RESULTING FROM THE PACIFIC EARTHQUAKE.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		7,798	
		TOTAL FUNDING LNR		7,800C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
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E. HEALTH

HTH595 - HEALTH RESOURCES ADMINISTRATION

1.	<p>HALE HOOLUOLU HOSPICE FACILITY, MAUI</p> <p>PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT OF A 12-BED HOSPICE CENTER ON THE ISLAND OF MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.</p>	<p>PLANS 1</p> <p>LAND 1</p> <p>DESIGN 1</p> <p>CONSTRUCTION 496</p> <p>EQUIPMENT 1</p> <p>TOTAL FUNDING HTH 500C</p>	C
2.	<p>MOLOKAI OHANA HEALTH CENTER, MOLOKAI</p> <p>DESIGN AND CONSTRUCTION FOR RENOVATION AND RELOCATION OF THE MOLOKAI COMMUNITY HEALTH CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.</p>	<p>DESIGN 1</p> <p>CONSTRUCTION 499</p> <p>TOTAL FUNDING HTH 500C</p>	C
3.	<p>REHABILITATION HOSPITAL OF THE PACIFIC FOUNDATION, OAHU</p> <p>PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE REHAB HOSPITAL OF THE PACIFIC FOR HEALTH AND SAFETY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.</p>	<p>PLANS 1</p> <p>DESIGN 1</p> <p>CONSTRUCTION 2,498</p> <p>TOTAL FUNDING HTH 2,500C</p>	C
4.	<p>WAHIAWA GENERAL HOSPITAL, OAHU</p> <p>PLANS, DESIGN AND CONSTRUCTION FOR MODERNIZATION AND EXPANSION OF EMERGENCY DEPARTMENT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.</p>	<p>PLANS 1</p> <p>DESIGN 1</p> <p>CONSTRUCTION 2,498</p> <p>TOTAL FUNDING HTH 2,500C</p>	C

CAPITAL IMPROVEMENT PROJECTS

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HTH210 - HAWAII HEALTH SYSTEMS CORPORATION – CORPORATE OFFICE

5.		LANAI COMMUNITY HOSPITAL, LANAI				
		PLANS AND DESIGN FOR EMERGENCY ROOM EXPANSION; FIRE SUPPRESSION & EXHAUST VENTILATION SYSTEM; REPAIRS, INSTALLATION OF HURRICANE WINDOW UPGRADE; MASTER PLANNING.				
		PLANS			1	
		DESIGN			1,339	
		TOTAL FUNDING	HTH		1,340C	C

HTH212 - HAWAII HEALTH SYSTEMS CORPORATION – REGIONS

6.		HAWAII HEALTH SYSTEMS CORPORATION, HEALTH AND SAFETY PROJECTS, STATEWIDE				
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR PROJECTS THAT ARE OF HEALTH AND SAFETY TO THE FACILITIES IN THE HAWAII HEALTH SYSTEMS CORPORATION.				
		DESIGN			1	1
		CONSTRUCTION			14,998	14,998
		EQUIPMENT			1	1
		TOTAL FUNDING	HTH		15,000C	15,000C
7.		KONA COMMUNITY HOSPITAL UPGRADE, HAWAII				
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO REPAIR AND UPGRADE THE EMERGENCY/ DISASTER INFRASTRUCTURE.				
		PLANS			1	
		DESIGN			1	
		CONSTRUCTION			4,997	
		EQUIPMENT			1	
		TOTAL FUNDING	HTH		5,000C	C
8.		KAHUKU MEDICAL CENTER, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION TO UPGRADE AND RENOVATE HOSPITAL FACILITIES. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, INFRASTRUCTURE, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.				
		PLANS			1	
		DESIGN			1	
		CONSTRUCTION			4,998	
		TOTAL FUNDING	HTH		5,000C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
HTH430 - ADULT MENTAL HEALTH - INPATIENT					
9.	430122	HAWAII STATE HOSPITAL, REPAIRS AND IMPROVEMENTS, OAHU DESIGN AND CONSTRUCTION FOR VARIOUS REPAIRS AND IMPROVEMENTS.			
		DESIGN		1,430	
		CONSTRUCTION		10,184	
		TOTAL FUNDING	AGS	11,614C	C
HTH907 - GENERAL ADMINISTRATION					
10.	907121	DEPARTMENT OF HEALTH, HEALTH AND SAFETY, STATEWIDE DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO HEALTH FACILITIES STATEWIDE. PROJECTS ARE NECESSARY TO MAINTAIN HEALTH AND SAFETY FOR CLIENTS AND STAFF.			
		DESIGN		495	620
		CONSTRUCTION		3,633	3,508
		TOTAL FUNDING	AGS	4,128C	4,128C
11.	907122	DEPARTMENT OF HEALTH, ENERGY EFFICIENCY IMPROVEMENTS, STATEWIDE DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO HEALTH FACILITIES STATEWIDE TO PROVIDE FOR ENERGY SAVINGS.			
		DESIGN		466	
		CONSTRUCTION		1,751	
		TOTAL FUNDING	AGS	2,217C	C
12.		DEPARTMENT OF HEALTH, REPAIRS AND IMPROVEMENTS, STATEWIDE DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO HEALTH FACILITIES, STATEWIDE			
		DESIGN		827	191
		CONSTRUCTION		6,338	1,112
		TOTAL FUNDING	AGS	7,165C	1,303C

F. SOCIAL SERVICES

DEF112 - SERVICES TO VETERANS

1. P90037 VETERANS CEMETERY IMPROVEMENTS, STATEWIDE
PLANS, DESIGN AND CONSTRUCTION
FOR MISCELLANEOUS UPGRADES
AND IMPROVEMENTS TO VETERANS
CEMETERIES STATEWIDE. THIS PROJECT
IS DEEMED NECESSARY TO QUALIFY
FOR FEDERAL AID FINANCING AND/OR
REIMBURSEMENT.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		6,760	3,033
		TOTAL FUNDING	DEF	6,761 C	3,034 C
			DEF	1 N	1 N
2.	P70036	COLUMBARIA NICHES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR ADDITIONAL COLUMBARIA NICHES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		200	
		CONSTRUCTION		1,000	
		TOTAL FUNDING	DEF	1,199 C	C
			DEF	1 N	N
3.	OVS004	AIEA BAY PUMPHOUSE PROPERTY ENVIRONMENTAL REMEDIATION, OAHU			
		DESIGN AND CONSTRUCTION FOR REMEDIATION ACTION FOR ENVIRONMENTAL CLEANUP. SITE ASSESSMENT WILL INCLUDE A PRIORITY FOCUS ON THE MERCURY CONTAMINATION ISSUES. MAY ALSO INCLUDE MISCELLANEOUS WORK RELATING TO SITE CLEANUP, SECURITY OF PROPERTY, AND VARIOUS CLOSE OUT ACTIONS REQUIRED BY OTHER STATE AND FEDERAL GOVERNMENT AGENCIES.			
		DESIGN		100	
		CONSTRUCTION			500
		TOTAL FUNDING	DEF	100 C	500 C
4.		USS MISSOURI MEMORIAL ASSOCIATION, OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO REPLACE AIR CONDITIONING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		158	
		TOTAL FUNDING	DEF	160 C	C
HMS220 - RENTAL HOUSING SERVICES					
5.		KUHIO PARK TERRACE IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR DRY STANDPIPE, RAISED CROSSWALK AND SITE IMPROVEMENTS.			
		CONSTRUCTION		9,200	7,000
		TOTAL FUNDING	HMS	9,200 C	7,000 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
6.	HPHA02	MAYOR WRIGHT HOMES, RENOVATIONS AND IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR MAYOR WRIGHT HOMES, TO INCLUDE THE REMOVAL OF SOLAR WATER HEATERS, ROOF REPLACEMENT, INSTALLATION OF INSTANT HOT WATER SYSTEM, PAINTING, AND OTHER IMPROVEMENTS.			
		DESIGN		1	
		CONSTRUCTION		5,599	
		TOTAL FUNDING	HMS	5,600C	C
7.	HPHA03	PALOLO VALLEY HOMES PHYSICAL IMPROVEMENTS PHASE 2, OAHU			
		CONSTRUCTION FOR PALOLO VALLEY HOMES, PHYSICAL IMPROVEMENTS PHASE 2.			
		CONSTRUCTION		5,000	
		TOTAL FUNDING	HMS	5,000C	C
8.	HPHA05	LANAKILA HOMES, MASTER PLAN FOR DEMOLITION OF REMAINING PARCELS, HAWAII			
		PLANS FOR LANAKILA HOMES, MASTER PLAN FOR THE DEMOLITION OF REMAINING PARCELS.			
		PLANS		100	
		TOTAL FUNDING	HMS	100C	C
9.	HPHA06	LANAKILA HOMES, RENOVATION OF EXISTING BUILDINGS, HAWAII			
		DESIGN AND CONSTRUCTION FOR LANAKILA HOMES, RENOVATION OF EXISTING BUILDINGS.			
		DESIGN		750	
		CONSTRUCTION			7,500
		TOTAL FUNDING	HMS	750C	7,500C
10.	HPHA07	HALE LAULIMA, MAJOR MODERNIZATION, ROOF REPLACEMENT, TERMITE DAMAGE, OAHU			
		CONSTRUCTION FOR HALE LAULIMA, TO INCLUDE MAJOR MODERNIZATION, ROOF REPLACEMENT, AND EXTENSIVE TERMITE DAMAGE REPAIR.			
		CONSTRUCTION			5,000
		TOTAL FUNDING	HMS	C	5,000C
11.	HPHA08	ADA COMPLIANCE FOR VARIOUS STATE AND FEDERAL PROJECTS, STATEWIDE			
		CONSTRUCTION FOR RENOVATIONS FOR ADA COMPLIANCE FOR VARIOUS STATE AND FEDERAL PROJECTS.			
		CONSTRUCTION		10,000	10,000
		TOTAL FUNDING	HMS	10,000C	10,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
12.	HPHA09	PUAHALA HOMES, PHASE 1B ABATEMENT AND MODERNIZATION BUILDINGS 4, 5, 6, OAHU			
		DESIGN AND CONSTRUCTION FOR PUAHALA HOMES, TO INCLUDE PHASE 1B ABATEMENT AND MODERNIZATION OF BUILDINGS 4, 5, AND 6.			
		DESIGN		105	
		CONSTRUCTION			1,900
		TOTAL FUNDING	HMS	105 C	1,900 C
13.	HPHA10	KALIHI VALLEY HOMES, SITE AND DWELLING IMPROVEMENTS PHASE IV, OAHU			
		DESIGN AND CONSTRUCTION FOR KALIHI VALLEY HOMES, TO INCLUDE SITE AND DWELLING IMPROVEMENTS PHASE IV.			
		DESIGN		700	
		CONSTRUCTION			7,000
		TOTAL FUNDING	HMS	700 C	7,000 C
14.	HPHA11	HAUIKI HOMES, SITE WORK AND ROOF REPAIRS, OAHU			
		DESIGN AND CONSTRUCTION FOR HAUIKI HOMES, SITE WORK AND ROOF REPAIRS.			
		DESIGN		65	
		CONSTRUCTION			600
		TOTAL FUNDING	HMS	65 C	600 C
15.	HPHA12	KAAHUMANU HOMES, SPALL REPAIR AND PAINTING FOR 19 BUILDINGS, SITE IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR KAAHUMANU HOMES, TO INCLUDE SPALL REPAIR AND PAINTING FOR 19 BUILDINGS, SITE IMPROVEMENTS, AND INTERIOR RENOVATIONS.			
		DESIGN		550	
		CONSTRUCTION		1,800	1,800
		TOTAL FUNDING	HMS	2,350 C	1,800 C
16.	HPHA13	POMAIKAI, MAJOR RENOVATIONS AND SITE IMPROVEMENTS, HAWAII			
		CONSTRUCTION FOR POMAIKAI, TO INCLUDE MAJOR RENOVATIONS, ROOF REPLACEMENT, INTERIOR REPAIRS, EXTERIOR AND SITE IMPROVEMENTS.			
		CONSTRUCTION		2,000	
		TOTAL FUNDING	HMS	2,000 C	C
17.	HPHA14	DAVID MALO CIRCLE, EXTERIOR IMPROVEMENTS AND SITE WORK, MAUI			
		DESIGN FOR DAVID MALO CIRCLE, TO INCLUDE EXTERIOR IMPROVEMENTS, PAINTING, ROOF REPAIRS, AND SITE WORK.			
		DESIGN		1,800	
		TOTAL FUNDING	HMS	1,800 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
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HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS

18. P11013 NAHASDA DEVELOPMENT PROJECTS, STATEWIDE

PLANS, DESIGN AND CONSTRUCTION FOR VARIOUS HAWAIIAN HOMESTEAD PROJECTS AND IMPROVEMENTS STATEWIDE, PURSUANT TO THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT, PUBLIC LAW 107-73, 107TH CONGRESS. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		1	1
DESIGN		1	1
CONSTRUCTION		19,998	19,998
TOTAL FUNDING	HHL	20,000N	20,000N

19. P11002 PAPAKOLEA SEWER SYSTEM UPGRADES, PAPAKOLEA, OAHU

DESIGN AND CONSTRUCTION TO REBUILD EXISTING SEWER SYSTEM IN DHHL PAPAKOLEA SUBDIVISION.

DESIGN		1	
CONSTRUCTION		4,999	
TOTAL FUNDING	HHL	5,000C	C

HTH904 - EXECUTIVE OFFICE ON AGING

20. PALOLO CHINESE HOME, OAHU

CONSTRUCTION FOR RENOVATION OF THE DINING HALL IN THE CARE HOME BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

CONSTRUCTION		500	
TOTAL FUNDING	HTH	500C	C

CAPITAL IMPROVEMENT PROJECTS

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G. FORMAL EDUCATION

EDN100 - SCHOOL-BASED BUDGETING

- 1. 20 LUMP SUM CIP — SCHOOL BUILDING IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING AND ROOF MAINTENANCE AGREEMENTS, AIR CONDITIONING, PAINTING, PLUMBING, FURNITURE AND REPLACEMENT FURNITURE, AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.

DESIGN	2,000	10,000
CONSTRUCTION	8,288	51,500
TOTAL FUNDING EDN	10,288 B	61,500 B

- 2. 10 LUMP SUM CIP — PROJECT ADJUSTMENT FUND, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.

PLANS	1	1
LAND	1	1
DESIGN	600	600
CONSTRUCTION	1,397	1,397
EQUIPMENT	1	1
TOTAL FUNDING EDN	2,000 B	2,000 B

- 3. 001001 LUMP SUM CIP — RELOCATE/CONSTRUCT TEMPORARY FACILITIES, STATEWIDE

DESIGN, CONSTRUCTION AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES (INCLUDING RESTROOMS) AND RELATED SITE IMPROVEMENTS, EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR CONSTRUCTED; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

DESIGN	2,000	964
CONSTRUCTION	5,676	3,880
EQUIPMENT	324	156
TOTAL FUNDING EDN	8,000 B	5,000 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
4.	006	LUMP SUM CIP — ADA COMPLIANCE, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY TO SCHOOL FACILITIES FOR HANDICAPPED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		900	500
		CONSTRUCTION		4,100	2,000
		TOTAL FUNDING EDN		5,000B	2,500B
5.	009	LUMP SUM CIP — HEALTH AND SAFETY, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH AND SAFETY REQUIREMENTS INCLUDING FIRE PROTECTION PROVISIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		400	400
		CONSTRUCTION		1,100	1,100
		TOTAL FUNDING EDN		1,500B	1,500B
6.	008009	LUMP SUM CIP — HAZARDOUS MATERIALS REMOVAL, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR THE CORRECTION, AND RENOVATION OF ALL EXISTING SCHOOL BUILDINGS AND CAMPUSES RELATED TO THE IDENTIFICATION AND/OR REMOVAL OF HAZARDOUS MATERIALS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		100	50
		DESIGN		200	150
		CONSTRUCTION		700	800
		TOTAL FUNDING EDN		1,000B	1,000B
7.	012	LUMP SUM CIP — ELECTRICAL/INFRASTRUCTURE IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ELECTRICAL, TELECOMMUNICATIONS, PROGRAM BELL AND OTHER INFRASTRUCTURE IMPROVEMENTS AT VARIOUS SCHOOLS.			
		PLANS		1	1
		DESIGN		1	498
		CONSTRUCTION		10,797	1,500
		EQUIPMENT		1	1
		TOTAL FUNDING EDN		10,800B	2,000B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
8.	031	LUMP SUM CIP — HIGH SCHOOL SCIENCE FACILITIES UPGRADES, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE IMPROVEMENT OF EXISTING OR NEW HIGH SCHOOL SCIENCE FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		2,000	200
		CONSTRUCTION		12,500	4,800
		EQUIPMENT		500	
		TOTAL FUNDING EDN		15,000B	5,000B
9.	000007	LUMP SUM CIP — SPECIAL EDUCATION RENOVATIONS, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE CLASSROOMS TO ADDRESS SPECIAL EDUCATION NEEDS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	200
		CONSTRUCTION		799	799
		EQUIPMENT		1	1
		TOTAL FUNDING EDN		1,000B	1,000B
10.	19	LUMP SUM CIP — GENDER EQUITY, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		450	450
		CONSTRUCTION		1,500	1,500
		EQUIPMENT		50	50
		TOTAL FUNDING EDN		2,000B	2,000B
11.	004004	LUMP SUM CIP — NOISE/HEAT ABATEMENT, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION PROBLEMS.			
		DESIGN		500	400
		CONSTRUCTION		2,500	1,600
		TOTAL FUNDING EDN		3,000B	2,000B
12.	002002	LUMP SUM CIP — MINOR RENOVATIONS AND IMPROVEMENTS, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES TO IMPROVE THE EDUCATIONAL PROGRAM AND TO CORRECT EDUCATIONAL SPECIFICATIONS DEFICIENCIES, INCLUDING STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		300	400

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION		1,625	1,000
		EQUIPMENT		75	100
		TOTAL FUNDING	EDN	2,000B	1,500B
13.	18	LUMP SUM CIP — MASTER PLAN/LAND ACQUISITION, STATEWIDE			
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF PARCELS, ACQUISITION SERVICES, FEASIBILITY STUDIES TO UPGRADE EXISTING FACILITIES, AND OTHER SERVICES NEEDED TO MEET FUTURE AND UNFORESEEN NEEDS.			
		PLANS		500	500
		LAND		500	500
		TOTAL FUNDING	EDN	1,000B	1,000B
14.	031	LUMP SUM CIP — ENERGY IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ENERGY IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		200	200
		DESIGN		300	300
		CONSTRUCTION		1,499	1,499
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	2,000B	2,000B
15.		LUMP SUM CIP — PLAYGROUND EQUIPMENT AND ACCESSIBILITY, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/EQUIPMENT PER AMERICAN WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	50
		CONSTRUCTION		449	449
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	500B	500B
16.		AIEA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE AIR CONDITIONING. GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		199	
		TOTAL FUNDING	EDN	200B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
17.		AIEA HIGH SCHOOL, OAHU DESIGN, CONSTRUCTION AND EQUIPMENT TO COMPLETE THE EXPANSION AND RENOVATION FOR THE ADMINISTRATION BUILDING, AND GROUND AND SITE APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		228	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	230	B
18.		AINA HAINA ELEMENTARY SCHOOL, OAHU PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR VARIOUS PROJECTS AT THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		252	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	255	B
19.		ALA WAI ELEMENTARY SCHOOL, OAHU CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	EDN	1,000	B
20.	120028	DOE DATA CENTER, OAHU DESIGN, CONSTRUCTION AND EQUIPMENT FOR BACKUP GENERATOR FOR EXISTING DATA CENTER OR NEW DATA CENTER AT A DIFFERENT SITE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		300	
		CONSTRUCTION		1,800	
		EQUIPMENT		100	
		TOTAL FUNDING	EDN	2,200	B
21.	120024	EAST KAPOLEI HIGH SCHOOL, OAHU PLANS, LAND ACQUISITION AND DESIGN FOR A NEW HIGH SCHOOL CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		900	
		LAND		100	
		DESIGN			2,300
		TOTAL FUNDING	EDN	1,000	2,300
22.	120026	EAST KAPOLEI MIDDLE SCHOOL, OAHU DESIGN FOR A NEW MIDDLE SCHOOL CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		2,500	
		TOTAL FUNDING	EDN	2,500	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
23.		ENCHANTED LAKE ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR CAMPUS WIDE ELECTRICAL UPGRADE.			
		DESIGN		1	
		CONSTRUCTION		1,399	
		TOTAL FUNDING EDN		1,400 B	B
24.		EWA ELEMENTARY SCHOOL, OAHU DESIGN, CONSTRUCTION AND EQUIPMENT TO CONSTRUCT AN EIGHT- CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		700	
		CONSTRUCTION			9,500
		EQUIPMENT			100
		TOTAL FUNDING EDN		700 B	9,600 B
25.	P10128	FARRINGTON HIGH SCHOOL, OAHU PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REHABILITATION OF THE CAMPUS FACILITIES, INCLUDING SWIMMING POOL AND LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			4,997
		EQUIPMENT			1
		TOTAL FUNDING EDN		B	5,000 B
26.		HAULA ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION OF FACULTY PARKING FACILITY, NEW DRAINAGE SYSTEM AND FLOOD CONTROL MEASURES, AND RETROFIT BUILDINGS FOR SOLAR PANELING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		100	
		TOTAL FUNDING EDN		150 B	B
27.		HELEMANO ELEMENTARY SCHOOL, OAHU PLANS AND DESIGN FOR A NEW LIBRARY AT HELEMANO ELEMENTARY SCHOOL. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		499	
		TOTAL FUNDING EDN		500 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
28.		HIGHLANDS INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO RENOVATE THE CHORUS CLASSROOM, INCLUDING ASBESTOS REMOVAL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		80	
		CONSTRUCTION		400	
		TOTAL FUNDING	EDN	480 B	
29.		ILIAHI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF COVERING FOR PLAY COURT. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,499	
		TOTAL FUNDING	EDN	1,500 B	
30.		JAMES CAMPBELL HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR UPGRADES AND RENOVATION TO THE ATHLETIC FIELD. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		998	
		TOTAL FUNDING	EDN	1,000 B	
31.		JAMES B. CASTLE HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO REPLACE THE LIGHTING SYSTEM AND SOUND SYSTEM IN THE RONALD BRIGHT AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		20	
		DESIGN		80	
		CONSTRUCTION		485	
		TOTAL FUNDING	EDN	585 B	
32.		KAILUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL SYSTEM UPGRADE. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		1,300	
		TOTAL FUNDING	EDN	1,400 B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
33.		KAILUA HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR REMOVAL AND REPLACEMENT OF SOCCER/FOOTBALL FIELD BLEACHERS/ STORAGE ROOMS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		50	
		DESIGN		500	
		CONSTRUCTION		1,950	
		TOTAL FUNDING EDN		2,500B	B
34.		KAISER HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR A GIRLS ATHLETIC LOCKER ROOM. PROJECTS TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		699	
		CONSTRUCTION			6,500
		TOTAL FUNDING EDN		700B	6,500B
35.		KALAHEO HIGH SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS TO THE ATHLETIC FIELD. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,497	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		1,500B	B
36.		KALANI HIGH SCHOOL, OAHU			
		DESIGN FOR GIRLS' LOCKER ROOM/ SHOWER BUILDING PER TITLE IX REQUIREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		800	
		TOTAL FUNDING EDN		800B	B
37.		KALEIOPUU ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			550
		TOTAL FUNDING EDN		B	550B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
38.		KAMAILE ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			800
		TOTAL FUNDING EDN		B	800B
39.		KANEOHE ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR ADA TRANSITION PLAN; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		30	
		DESIGN		150	
		CONSTRUCTION		600	
		TOTAL FUNDING EDN		780B	B
40.		KANEOHE ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW PORTABLE CLASSROOM BUILDING.			
		DESIGN		1	
		CONSTRUCTION		398	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		400B	B
41.		KANOELANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL SYSTEM UPGRADE.			
		DESIGN		1	
		CONSTRUCTION		949	
		TOTAL FUNDING EDN		950B	B
42.	454051	KAPAA ELEMENTARY SCHOOL, KAUAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		75	
		CONSTRUCTION		5,850	
		EQUIPMENT		75	
		TOTAL FUNDING EDN		6,000B	B
43.	P90080	KAPOLEI II ELEMENTARY SCHOOL, OAHU			
		LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW ELEMENTARY SCHOOL IN THE KAPOLEI REGION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		LAND			1
		DESIGN			1
		CONSTRUCTION			39,398
		EQUIPMENT			600
		TOTAL FUNDING EDN		B	40,000B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
44.		KAUAI HIGH SCHOOL, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW GYMNASIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		100	
		CONSTRUCTION		10,835	
		TOTAL FUNDING EDN		10,936B	B
45.	370051	KEAAU MIDDLE SCHOOL, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		2,200	
		EQUIPMENT		100	
		TOTAL FUNDING EDN		2,500B	B
46.		KEONEULA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR 4 NEW PORTABLE CLASSROOMS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,373	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		1,375B	B
47.		KING KEKAULIKE HIGH SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR A NEW AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,949	
		TOTAL FUNDING EDN		1,950B	B
48.		KING LUNALILO ELEMENTARY, OAHU			
		PLANS, CONSTRUCTION AND EQUIPMENT FOR RESURFACING OF BASKETBALL COURTS AND PURCHASE OF HOOPS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		CONSTRUCTION		198	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		200B	B
49.		KIPAPA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE AIR CONDITIONING.			
		DESIGN			1
		CONSTRUCTION			199
		TOTAL FUNDING EDN		B	200B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
50.		KOHALA HIGH SCHOOL, HAWAII			
		PLANS AND DESIGN FOR A STEM/ SCIENCE BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		799	
		TOTAL FUNDING EDN		800B	B
51.	120020	KUALAPUU ELEMENTARY SCHOOL, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR A NEW WATERLINE AND/OR OTHER PROVISIONS FOR FIRE SUPPRESSION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		2,749	
		TOTAL FUNDING EDN		2,750B	B
52.		LAHAINA INTERMEDIATE SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR RENOVATION OF STUDENT RESTROOMS; GROUND AND SITE IMPROVEMENTS.			
		DESIGN			85
		CONSTRUCTION			855
		TOTAL FUNDING EDN		B	940B
53.	F12018	LAIE ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR THE EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		62	
		TOTAL FUNDING EDN		62B	B
54.		LEHUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO EXPAND THE SCHOOL PARKING LOT. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		500	
		TOTAL FUNDING EDN		600B	B
55.		LINCOLN ELEMENTARY SCHOOL, OAHU			
		DESIGN FOR AIR CONDITIONING UPGRADES FOR BUILDING C AND D IN ORDER OF PRIORITY. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		TOTAL FUNDING EDN		200B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
56.		MANOA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR THE RESURFACING OF THE BLACKTOP PLAY AREA FOR THE STUDENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		480	
		TOTAL FUNDING	EDN	500	B
57.		MCKINLEY HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW SYNTHETIC TRACK AND FIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		4,998	
		TOTAL FUNDING	EDN	5,000	B
58.		MILILANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO RESURFACE TENNIS COURTS, PARKING LOT, AND DRIVEWAY.			
		DESIGN			1
		CONSTRUCTION			469
		TOTAL FUNDING	EDN	B	470
59.		MILILANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE AND UPGRADE FIBER-OPTIC BACKBONE AND BUILDING NETWORK CABLING.			
		DESIGN		1	
		CONSTRUCTION		999	
		TOTAL FUNDING	EDN	1,000	B
60.		MILILANI MAUKA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		500	
		TOTAL FUNDING	EDN	501	B
61.		MILILANI MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF A COVERING FOR OUTDOOR PLAY COURT. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		500	
		TOTAL FUNDING	EDN	501	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
62.		MILILANI MIDDLE SCHOOL, OAHU			
		CONSTRUCTION TO REPAIR AND REPLACE ROOFS ON BUILDINGS G AND F.			
		CONSTRUCTION		750	
		TOTAL FUNDING EDN		750B	B
63.		MILILANI IKE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR REPAIR AND RENOVATION OF COVERED PLAY COURT. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		149	
		TOTAL FUNDING EDN		150B	B
64.		MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR INSTALLATION OF NEW PLAYGROUND EQUIPMENT. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		72	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		75B	B
65.		MOANALUA HIGH SCHOOL, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR SCHOOL AUDITORIUM/PERFORMING ARTS CENTER TO COMPLETE PHASE 1. GROUND AND SITE IMPROVEMENTS, INFRASTRUCTURE, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		CONSTRUCTION		599	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		600B	B
66.		MOMILANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		599	
		TOTAL FUNDING EDN		600B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
67.		NOELANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO EXPAND THE CURRENT SCHOOL LIBRARY SPACE FOR AN EXPANDED LIBRARY COLLECTION, WORK SPACE, AND INCLUSION OF A TECHNOLOGY/MEDIA CENTER WITHIN THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		900	
		TOTAL FUNDING	EDN	1,000 B	B
68.		OLOMANA SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION OF A TWELVE-FOOT EXTENSION TO THE EXISTING PHYSICAL EDUCATION PORTABLE TO ACCOMMODATE INCREASING NUMBERS OF "AT-RISK" STUDENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		5	
		DESIGN		8	
		CONSTRUCTION		75	
		TOTAL FUNDING	EDN	88 B	B
69.		PAHOA ELEMENTARY SCHOOL, HAWAII			
		PLANS AND DESIGN FOR A NEW CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		999	
		TOTAL FUNDING	EDN	1,000 B	B
70.		PEARL CITY HIGHLANDS, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		949	
		TOTAL FUNDING	EDN	950 B	B
71.		PEARLRIDGE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,149	
		TOTAL FUNDING	EDN	1,150 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
72.		PRINCESS NAHIENAENA ELEMENTARY SCHOOL, MAUI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR TWO PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		60	
		CONSTRUCTION		656	
		EQUIPMENT		24	
		TOTAL FUNDING EDN		740 B	
73.		PUOHALA ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN FOR A STRUCTURAL ASSESSMENT TO ADDRESS THE SEPARATION OF WALLS IN BUILDINGS ON CAMPUS.			
		PLANS		1	
		DESIGN		249	
		TOTAL FUNDING EDN		250 B	
74.		ROYAL ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN FOR BUILDING C. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		199	
		TOTAL FUNDING EDN		200 B	
75.		SALT LAKE ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE INTERIOR CLASSROOMS OF C-1; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		500	
		EQUIPMENT		300	
		TOTAL FUNDING EDN		1,000 B	
76.		SEAGULL SCHOOLS PRESCHOOL, OAHU			
		CONSTRUCTION OF A NEW CLASSROOM BUILDING LOCATED AT KAPOLEI ELEMENTARY SCHOOL. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		300	
		TOTAL FUNDING EDN		300 C	
77.		STEVENSON MIDDLE SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION OF BUILDING A, MULTI-PURPOSE SCIENCE LEARNING CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		225	
		DESIGN		225	
		CONSTRUCTION			6,750
		TOTAL FUNDING EDN		450 B	6,750 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
78.		WAIAKEA HIGH SCHOOL, HAWAII			
		CONSTRUCTION AND EQUIPMENT FOR THE SCHOOL'S NEW ALL-WEATHER TRACK AND FIELD FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		3,000	
		EQUIPMENT			500
		TOTAL FUNDING EDN		3,000 B	500 B
79.		WAIAKEAWAENA ELEMENTARY SCHOOL, HAWAII			
		CONSTRUCTION FOR ADDITIONAL PARKING ON KINOOLE STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			450
		TOTAL FUNDING EDN		B	450 B
80.		WAIAU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			1,199
		TOTAL FUNDING EDN		B	1,200 B
81.		WAIMANALO ELEMENTARY AND INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO INSTALL CAMPUS-WIDE IRRIGATION SYSTEM. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		499	
		TOTAL FUNDING EDN		500 B	B
82.	P90122	WAIPAHU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		8,099	
		TOTAL FUNDING EDN		8,100 B	B
83.		WAIPAHU HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES IN BUILDINGS H, G, AND Q; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		58	
		TOTAL FUNDING EDN		60 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
84.		WAIPAHU INTERMEDIATE SCHOOL, OAHU			
		DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		800	
		TOTAL FUNDING	EDN	800B	B
85.		WASHINGTON MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES FOR THE SCHOOL KITCHEN, CAFETERIA, AND BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		179	
		TOTAL FUNDING	EDN	180B	B
EDN400 - SCHOOL SUPPORT					
86.	000014	LUMP SUM CIP — PROJECT POSITIONS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		5,200	5,200
		TOTAL FUNDING	EDN	5,200B	5,200B
EDN600 - CHARTER SCHOOLS					
87.		WEST HAWAII EXPLORATIONS ACADEMY, HAWAII			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR RELOCATION OF CAMPUS FACILITIES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		LAND		1	
		DESIGN		1	
		CONSTRUCTION		1,496	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	1,500C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
88.		VOLCANO SCHOOL OF ARTS AND SCIENCES, HAWAII			
		PLANS AND DESIGN TO RELOCATE VOLCANO SCHOOL OF ARTS AND SCIENCES TO KEAKEALANI SCHOOL IN VOLCANO VILLAGE ON THE ISLAND OF HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		309	
		DESIGN		309	
		TOTAL FUNDING	EDN	618C	C
EDN407 - PUBLIC LIBRARIES					
89.	01-H S	HEALTH AND SAFETY, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECTS MAY INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDINGS AND GROUNDS, AND OTHERS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		200	200
		DESIGN		600	600
		CONSTRUCTION		1,200	1,200
		TOTAL FUNDING	EDN	2,000C	2,000C
90.		KANEOHE PUBLIC LIBRARY, OAHU			
		PLANS, DESIGN AND CONSTRUCTION OF NEW, ADA COMPLIANT CIRCULATION DESK.			
		PLANS			5
		DESIGN			5
		CONSTRUCTION			10
		TOTAL FUNDING	EDN		20C
91.		NEW NANAKULI PUBLIC LIBRARY, OAHU			
		DESIGN FOR A NEW NANAKULI PUBLIC LIBRARY.			
		DESIGN		1,075	
		TOTAL FUNDING	EDN	1,075C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
UOH100 - UNIVERSITY OF HAWAII, MANOA					
92.		MOKU O LO'E (COCONUT ISLAND), OAHU			
		PLANS, CONSTRUCTION AND EQUIPMENT TO DEMOLISH THE OLD AND DILIPIDATED STRUCTURE THAT WAS ONCE PART OF THE PAULEY GUEST HOUSE AND RESIDENCE ON THE ISLAND. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, INFRASTRUCTURE, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		1	
		CONSTRUCTION		698	
		EQUIPMENT		1	
		TOTAL FUNDING	UOH	700 C	C
UOH210 - UNIVERSITY OF HAWAII, HILO					
93.		UHH, STUDENT HOUSING DEVELOPMENTS, PHASE 1, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF STUDENT HOUSING FACILITIES FOR THE UNIVERSITY OF HAWAII AT HILO; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		31,998	
		TOTAL FUNDING	UOH	16,000 C	C
			UOH	16,000 E	E
94.		LIVING LEARNING COMMUNITY, UNIVERSITY OF HAWAII AT HILO, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITIES AND DEVELOPMENT OF AN ADDITION TO UNIVERSITY OF HAWAII AT HILO STUDENT HOUSING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		700	
		CONSTRUCTION		7,100	
		EQUIPMENT		200	
		TOTAL FUNDING	UOH	4,000 C	C
			UOH	4,000 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
UOH700 - UNIVERSITY OF HAWAII, WEST OAHU					
95.		UNIVERSITY OF HAWAII - WEST OAHU, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A PHOTOVOLTAIC PANEL ARRAY TO GENERATE POWER FOR THE NEW UH WEST OAHU CAMPUS IN KAPOLEI.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		2,497	
		EQUIPMENT		1	
		TOTAL FUNDING UOH		2,500C	C
UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES					
96.	L28	LEE, EDUCATION AND INNOVATION FACILITY, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW EDUCATION AND INNOVATION INSTRUCTIONAL FACILITY AT LEEWARD COMMUNITY COLLEGE.			
		DESIGN		332	
		CONSTRUCTION		16,810	
		EQUIPMENT		1,871	
		TOTAL FUNDING UOH		19,013C	C
97.		MAU, RENOVATION OF THE ORIGINAL SCIENCE BUILDING, MAUI			
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF THE EXISTING SCIENCE BUILDING TO HOUSE ALLIED HEALTH PROGRAMS AT UNIVERSITY OF HAWAII MAUI COLLEGE. PROJECT INCLUDES RENOVATION OF EXISTING FACILITY, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		CONSTRUCTION			4,000
		EQUIPMENT			501
		TOTAL FUNDING UOH		C	4,501C
98.		HAW, HAWAII COMMUNITY COLLEGE, HAWAII			
		PLANS TO UPDATE THE LONG RANGE DEVELOPMENT PLAN FOR THE HAWAII COMMUNITY COLLEGE CAMPUS.			
		PLANS			500
		TOTAL FUNDING UOH		C	500C
99.		LEE, WAIANAEE EDUCATION CENTER, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE WAIANAEE EDUCATION CENTER.			
		PLANS		1	
		LAND		500	
		DESIGN		500	
		CONSTRUCTION		1,998	
		EQUIPMENT		1	
		TOTAL FUNDING UOH		3,000C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
100.		SYS, MINOR CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR CAMPUSES OF THE COMMUNITY COLLEGE SYSTEM, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR MINOR CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR CAMPUS FACILITIES WITHIN THE UNIVERSITY OF HAWAII, COMMUNITY COLLEGE SYSTEM.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		9,997	
		EQUIPMENT		1	
		TOTAL FUNDING UOH		10,000C	C
UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT					
101.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.			
		PLANS		301	
		DESIGN		1,255	
		CONSTRUCTION		28,444	3,977
		TOTAL FUNDING UOH		30,000C	3,977C
102.	541	SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO UNIVERSITY OF HAWAII FACILITIES. PROJECTS TO INCLUDE CAPITAL RENEWAL, REDUCTION OF MAINTENANCE BACKLOG, MAJOR AND MINOR RENOVATIONS, MODERNIZATION OF FACILITIES, REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.			
		PLANS		1	1
		DESIGN		3,000	1
		CONSTRUCTION		46,998	9,997
		EQUIPMENT		1	1
		TOTAL FUNDING UOH		50,000C	10,000C
103.	548	SYS, UNIVERSITY OF HAWAII PROJECT ADJUSTMENT FUND, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A PROJECT ADJUSTMENT FUND FOR THE UNIVERSITY OF HAWAII.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1	
		EQUIPMENT		1	
		TOTAL FUNDING UOH		4C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

H. CULTURE AND RECREATION

LNR804 - FOREST AND OUTDOOR RECREATION

1.	D00K	LUMP SUM IMPROVEMENTS AT DOFAW FACILITIES FOR FORESTS AND/OR OUTDOOR RECREATION, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION AT DOFAW FACILITIES FOR FORESTS AND/OR OUTDOOR RECREATION.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		3,323	
		TOTAL FUNDING LNR		3,325C	C

LNR806 - PARKS ADMINISTRATION AND OPERATION

2.		STATE PARKS ENERGY AND WATER EFFICIENCY IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION OF ENERGY AND WATER EFFICIENCY AND RELATED IMPROVEMENTS.			
		DESIGN		500	
		CONSTRUCTION		500	1,000
		TOTAL FUNDING LNR		1,000C	1,000C
3.		LUMP SUM CIP, STATE PARKS IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION OF REPAIR AND MAINTENANCE IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS AT STATE PARKS FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		2,029	899
		CONSTRUCTION		16,245	17,820
		TOTAL FUNDING LNR		18,075C	18,520C
				200N	200N
4.		CENTRAL MAUI REGIONAL PARK, MAUI			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR ESTABLISHMENT OF A REGIONAL PARK IN THE AREA OF CENTRAL MAUI; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		LAND		1	
		DESIGN		1	
		CONSTRUCTION		8,997	
		TOTAL FUNDING LNR		9,000C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
5.		LUALUALEI FLATS/PUHAWAI STREAM, OAHU			
		CONSTRUCTION FOR FLOOD MITIGATION.			
		CONSTRUCTION		2,000	
		TOTAL FUNDING LNR		2,000C	C
6.		MANA DRAG RACING STRIP, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION TO UPGRADE AND RESURFACE MANA DRAG RACING STRIP. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		498	
		TOTAL FUNDING LNR		500C	C
7.		FRIENDS OF IOLANI PALACE, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR CONTINUING RENOVATIONS, REPAIRS AND RESTORATION WITHIN THE PALACE COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		498	
		TOTAL FUNDING LNR		500C	C
LNR801 - OCEAN-BASED RECREATION					
8.		MALA BOAT RAMP AND LOADING DOCK, LAHAINA, MAUI			
		CONSTRUCTION FOR NEW LOADING DOCKS, IMPROVEMENTS TO BOAT RAMP, PARKING LOT AND RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		800	
		TOTAL FUNDING LNR		200C	C
				600N	N
9.		KIKIAOLA SMALL BOAT HARBOR SAND BY-PASS PROGRAM, KEKAHA, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION FOR A SAND BY-PASS PROJECT TO MOVE SAND FROM THE EAST SIDE OF THE HARBOR TO THE WEST SIDE OF THE HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		200	
		DESIGN		200	
		CONSTRUCTION			1,000
		TOTAL FUNDING LNR		400N	1,000N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
10.	B99	LUMP SUM IMPROVEMENTS AT BOATING AND OCEAN RECREATION FACILITIES, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS BOATING FACILITIES TO INCLUDE PIERS, LOADING DOCKS, UTILITIES, BOAT RAMPS, RESTROOMS, PARKING AREAS, STRUCTURES, DREDGING, SEWER SYSTEMS, BUILDING, FENCING, RENDERING, MOORINGS, LANDSCAPING AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		7,498	3,998
		TOTAL FUNDING	LNR	7,000 C	4,000 C
				500 N	N
11.		MAUNALUA BAY LAUNCH RAMP FACILITY, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE THE MAUNALUA BAY LAUNCH RAMP FACILITY.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,997	
		EQUIPMENT		1	
		TOTAL FUNDING	LNR	2,000 E	E
12.		HALEIWA SMALL BOAT HARBOR, OAHU			
		PLANS, DESIGN AND CONSTRUCTION OF NEW PIERS, CATWALKS, APPROACHES, AND FLOATING DOCK SYSTEM AT THE HALEIWA SMALL BOAT HARBOR.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,998	
		TOTAL FUNDING	LNR	2,000 C	C
13.		HANA BOAT RAMP AND WHARF IMPROVEMENTS, MAUI			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BOAT RAMP, REVETMENT, APPROACH AREA, AND OTHER RELATED WORK.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		3,123	
		TOTAL FUNDING	LNR	3,125 C	C
14.		WAIANAE BOAT HARBOR IMPROVEMENTS, OAHU			
		PLANS AND DESIGN FOR IMPROVEMENTS AT WAIANAE BOAT HARBOR. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		499	
		TOTAL FUNDING	LNR	500 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
15.		WAILOA SMALL BOAT HARBOR DREDGING, HAWAII			
		CONSTRUCTION FOR REMOVAL OF SAND AT THE ENTRANCE TO THE WAILOA SMALL BOAT HARBOR.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING LNR		1,000C	C
AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM					
16.	Q104	LUMP SUM HEALTH AND SAFETY, ALOHA STADIUM, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR THE MITIGATION/ELIMINATION OF CONDITIONS THAT MAY BECOME HAZARDOUS TO HEALTH AND SAFETY, INCLUDING REPAIRS, ALTERATIONS, AND IMPROVEMENTS TO THE ALOHA STADIUM TO MEET CODE, SAFETY, AND/OR OPERATIONAL REQUIREMENTS.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		5,148	5,148
		TOTAL FUNDING AGS		5,150C	5,150C
I. PUBLIC SAFETY					
PSD900 - GENERAL ADMINISTRATION					
1.	P-20110	LUMP SUM CIP, RENOVATION, REPLACEMENT AND IMPROVEMENT PROJECTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS, REPLACEMENTS AND OTHER IMPROVEMENTS TO ANY PSD PROGRAM, STATEWIDE. SAID ACTIONS MAY INCLUDE, BUT NOT BE LIMITED TO, BUILDINGS AND BUILDINGS OPERATING SYSTEMS; SITE UTILITIES AND/OR OTHER IMPROVEMENTS.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		7,998	7,998
		TOTAL FUNDING PSD		8,000C	8,000C
2.	P20112	PLANNING FOR THE ORDERLY DEVELOPMENT OF NEW CORRECTIONAL FACILITIES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE ORDERLY DEVELOPMENT OF NEW AND/OR REPLACEMENT CORRECTIONAL FACILITIES BY THE DEPARTMENT OF PUBLIC SAFETY, STATEWIDE.			
		PLANS		1	
		LAND		1	
		DESIGN		1	
		CONSTRUCTION		997	
		TOTAL FUNDING PSD		1,000C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
DEF110 - AMELIORATION OF PHYSICAL DISASTERS					
3.	A0201	RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT TO RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES AND INCREASE THE NUMBER OF PUBLIC SHELTERS STATEWIDE.			
		PLANS		2	1
		LAND		2	1
		DESIGN		46	98
		CONSTRUCTION		1,200	1,050
		EQUIPMENT		750	500
		TOTAL FUNDING	DEF	2,000C	1,650C
4.	A40	DISASTER WARNING AND COMMUNICATIONS DEVICES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT AND UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		158	158
		CONSTRUCTION		1,200	1,200
		EQUIPMENT		240	240
		TOTAL FUNDING	DEF	1,500C	1,500C
			DEF	100N	100N
5.	A45	AMERICANS WITH DISABILITIES ACT (ADA) AND INFRASTRUCTURE IMPROVEMENTS, STATEWIDE			
		CONSTRUCTION FOR MODIFICATIONS FOR PERSONS WITH DISABILITIES AND TO IDENTIFY AND CORRECT EXISTING DEFICIENCIES FOR THE DEPARTMENT OF DEFENSE (DOD) FACILITIES. THIS PROJECT IS NECESSARY TO MEET REQUIREMENTS IN ACCORDANCE WITH STATE AND FEDERAL LAWS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		1,753	
		TOTAL FUNDING	AGS	707C	C
			AGS	1,046N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
6.	A46	HEALTH AND SAFETY REQUIREMENTS FOR BIRKHIMER TUNNEL AND SUPPORT FACILITIES, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR HEALTH AND SAFETY IMPROVEMENTS TO THE STATE EMERGENCY OPERATING CENTER, BIRKHIMER TUNNEL & SUPPORT FACILITIES TO INCLUDE ADA COMPLIANCE, SPRINKLER SYSTEM, AND ADDITIONAL INSTALLATION OF CONDUITS, REMOVAL OF OVERHEAD UTILITY LINES, & OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		23	23
		CONSTRUCTION		395	400
		EQUIPMENT		123	175
		TOTAL FUNDING DEF		543 C	600 C
7.	AD2071	ENERGY SAVINGS IMPROVEMENTS AND RENEWABLE ENERGY PROJECTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF ENERGY EFFICIENT STATE OF THE ART BLDG AC SYSTEMS TO REPLACE FAILING AND INEFFICIENT EQUIPMENT. IMPLEMENT EXT CONTROLS TO PROVIDE SET BACKS AND REDUCE ENERGY CONSUMPTION STATEWIDE. DESIGN AND CONSTRUCT RENEWABLE ENERGY TECHNOLOGIES TO REDUCE USE OF FOSSIL FUELS AND PROVIDE CLEAN AND RELIABLE ENERGY FOR HIGH CONSUMPTION ON FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		100	200
		CONSTRUCTION		3,395	6,300
		TOTAL FUNDING DEF		250 C	1,250 C
				3,245 N	5,250 N
8.	A44	RENOVATION OF BLDG 117, KALAELOA, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AN ARMY NATIONAL GUARD CONSOLIDATED FACILITY OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION, UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, INTERIM RENOVATIONS AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,581	
		CONSTRUCTION		39,500	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		EQUIPMENT		50	745
		TOTAL FUNDING	DEF	1,650 C	50 C
			DEF	39,481 N	695 N
9.	AB2073	29TH INFANTRY BRIGADE COMBAT TEAM READINESS CENTER, KALAELOA, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR THE NEW 29TH BRIGADE COMBAT TEAM READINESS CENTER WILL BE BUILT TO NATIONAL GUARD BUREAU STANDARDS AND WILL MEET LEED SILVER USAGE LEVEL REQUIREMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	
		DESIGN		449	450
		CONSTRUCTION			33,000
		TOTAL FUNDING	DEF	450 C	450 C
			DEF	N	33,000 N
10.	A42	MINOR MILITARY CONSTRUCTION AND RENOVATIONS AT ARMY GUARD FACILITIES, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR REPLACEMENT OF EXISTING HAWAII ARMY NATIONAL GUARD KALAELOA AND RTI CAMPUS UTILITIES INFRASTRUCTURE, LARGER REPAIR PROJECTS, AND FEDERAL ENERGY PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		300	
		DESIGN		1,500	
		CONSTRUCTION		1,000	500
		EQUIPMENT			16,500
		TOTAL FUNDING	DEF	1,800 C	500 C
			DEF	1,000 N	16,500 N
11.		UPGRADE AND IMPROVEMENTS TO NATIONAL GUARD FACILITIES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND UPGRADES TO NATIONAL GUARD ARMORIES TO CONFORM TO CURRENT NATIONAL GUARD BUREAU STANDARDS AND CRITERIA, AND TO MEET UNANTICIPATED HEALTH, SAFETY, AND BUILDING CODE REQUIREMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			700
		CONSTRUCTION		4,600	840
		TOTAL FUNDING	DEF	1,400 C	700 C
			DEF	3,200 N	840 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

K. GOVERNMENT-WIDE SUPPORT

GOV100 - OFFICE OF THE GOVERNOR

1.	G01	PROJECT ADJUSTMENT FUND, STATEWIDE				
		PLANS FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.				
		PLANS			1	1
		TOTAL FUNDING GOV		1C		1C

BUF101 - DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION

2.	00-01	HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE				
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995.				
		CONSTRUCTION		30,000		30,000
		TOTAL FUNDING BUF		30,000C		30,000C
3.	00-02	STATE EDUCATIONAL FACILITIES IMPROVEMENT FUND, STATEWIDE				
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.				
		CONSTRUCTION		539,836		170,960
		TOTAL FUNDING BUF		539,836C		170,960C

TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION

4.	1	KEELIKOLANI BLDG, AIR CONDITIONING UPGRADE FOR THE TAX DEPARTMENT'S COMPUTER ROOM, OAHU				
		DESIGN AND CONSTRUCTION TO UPGRADE THE 24/7 AC THAT COOLS MULTIPLE DOTAX COMPUTER EQUIPMENT INCLUDING THE MULTI-MILLION DOLLAR ITIMS IMAGING SYSTEMS (IIS).				
		DESIGN		33		
		CONSTRUCTION		300		
		TOTAL FUNDING TAX		333C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

AGS131 - INFORMATION PROCESSING AND COMMUNICATION SERVICES

5. Q102 LUMP SUM HEALTH AND SAFETY, INFORMATION AND COMMUNICATION SERVICE DIVISION, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR REPAIRS, UPGRADES AND EXPANSION OF CRITICAL COMMUNICATIONS BACKBONE SYSTEMS, INCLUDING THE STATEWIDE ANUENUE AND HAWAIIAN MICROWAVE SYSTEMS AND THE WINDWARD, NORTH SHORE AND CENTRAL OAHU RADIO SITES. EFFORTS INCLUDE WORK THAT ALSO SUPPORTS FUTURE BROADBAND AIR INTERFACE DEVELOPMENT AND IMPLEMENTATION.

PLANS		150	150
LAND		50	50
DESIGN		300	300
CONSTRUCTION		7,035	6,935
EQUIPMENT		600	600
TOTAL FUNDING	AGS	8,135C	8,035C

6. S101 ICSD KALANIMOKU BUILDING DATA CENTER OPTIMIZATION AND ENERGY EFFICIENCY, OAHU

PLANS AND DESIGN FOR REPAIRS, UPGRADES AND EXPANSION OF CRITICAL DATA CENTER SYSTEMS AND SUPPORT INFRASTRUCTURE WITHIN THE KALANIMOKU BUILDING, OAHU. WORK WILL OPTIMIZE NECESSARY STATEWIDE FUNCTIONALITY AND INCREASE ENERGY EFFICIENCY WITHIN THE FACILITY.

PLANS		50	
DESIGN		50	100
TOTAL FUNDING	AGS	100C	100C

LNR101 - PUBLIC LANDS MANAGEMENT

7. J42A DAM ASSESSMENTS, MAINTENANCE AND REMEDIATION, STATEWIDE

PLANS, DESIGN AND CONSTRUCTION FOR ASSESSMENTS, MAINTENANCE AND REMEDIATION OF DAMS UNDER THE JURISDICTION OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

PLANS		1	
DESIGN		1	
CONSTRUCTION		2,498	
TOTAL FUNDING	LNR	2,500S	S

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
AGS221 - PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION						
8.	E109	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR COSTS RELATING TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.				
		PLANS		7,361	7,361	
		LAND		1	1	
		DESIGN		1	1	
		CONSTRUCTION		1	1	
		EQUIPMENT		1	1	
		TOTAL FUNDING AGS		7,365C	7,365C	
9.	Q101	LUMP SUM MAINTENANCE OF EXISTING FACILITIES, PUBLIC WORKS DIVISION, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND MAINTENANCE OF PUBLIC FACILITIES AND SITES, STATEWIDE. PROJECTS MAY INCLUDE ROOFING, OTHER REPAIRS, AND IMPROVEMENTS.				
		PLANS		50	50	
		LAND		1	1	
		DESIGN		200	200	
		CONSTRUCTION		16,240	13,740	
		EQUIPMENT		9	9	
		TOTAL FUNDING AGS		16,500C	14,000C	
10.	P60131	ENERGY CONSERVATION AND SUSTAINABLE DESIGN IMPROVEMENTS, STATEWIDE				
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR DEVELOPMENT AND IMPLEMENTATION OF A COMPREHENSIVE ENERGY CONSERVATION PLAN TO MAXIMIZE ENERGY EFFICIENCY IN PUBLIC FACILITIES AND OPERATIONS. EFFORTS WILL INCLUDE CONSIDERATION FOR SUSTAINABLE DESIGN TO THE FULLEST EXTENT POSSIBLE.				
		PLANS		1	1	
		DESIGN		1	1	
		CONSTRUCTION		3,436	1,997	
		EQUIPMENT		1	1	
		TOTAL FUNDING AGS		3,439C	2,000C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F	
11.	L102	KAMAMALU BUILDING, ASBESTOS REMOVAL AND BUILDING RENOVATION, OAHU				
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ASBESTOS MITIGATION AND RENOVATION OF THE APPROXIMATELY 75,000 GROSS SQUARE FOOT KAMAMALU BUILDING.				
		PLANS		150		
		DESIGN		2,000		
		CONSTRUCTION		10,849		
		EQUIPMENT		1		
		TOTAL FUNDING	AGS	13,000 C		C
12.	P104	WASHINGTON PLACE, HEALTH AND SAFETY AND QUEEN'S GALLERY RENOVATION, OAHU				
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO ADDRESS IMMEDIATE HEALTH AND SAFETY NEEDS AT WASHINGTON PLACE, PROJECT INCLUDES LEAD BASED PAINT ABATEMENT/ENCAPSULATION, BLDG CODE REQUIREMENTS (STRUCTURAL, ELECTRICAL, PLUMBING, AND VENTILATION) AND ADAAG REQUIREMENTS. ASSOCIATED TO THIS WORK IS RENOVATION FOR BUILDING PRESERVATION WITH THE RETENTION OF EXISTING HISTORIC MATERIAL.				
		PLANS		1		
		DESIGN		1		
		CONSTRUCTION		4,758		
		EQUIPMENT		1		
		TOTAL FUNDING	AGS	1,500 C		C
			AGS	3,261 R		R
13.		BISHOP MUSEUM, RENOVATION OF PLANETARIUM, OAHU				
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENT TO BISHOP MUSEUM PLANETARIUM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		DESIGN		1		
		CONSTRUCTION		1,498		
		EQUIPMENT		1		
		TOTAL FUNDING	AGS	1,500 C		C
14.		BISHOP MUSEUM, RENOVATION OF POLYNESIAN HALL, OAHU				
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENT OF THE POLYNESIAN HALL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION		999		
		EQUIPMENT		1		
		TOTAL FUNDING	AGS	1,000 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
15.		LAHAINALUNA HIGH SCHOOL FOUNDATION, MAUI			
		DESIGN AND CONSTRUCTION FOR STADIUM PROJECT, PHASE 2. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		1,699	
		TOTAL FUNDING	AGS	1,700C	C
SUB201 - CITY AND COUNTY OF HONOLULU					
16.		MAINTENANCE AND REPAIR OF PUBLIC ROADS, OAHU			
		DESIGN AND CONSTRUCTION FOR MAINTENANCE, IMPROVEMENT, AND REPAIR OF PUBLIC ROADS IN THE TWENTIETH REPRESENTATIVE DISTRICT; PROVIDED THAT THE SUMS NOT LAPSE AT THE END OF THE FISCAL BIENNIUM FOR WHICH THE APPROPRIATION IS MADE; PROVIDED THAT ALL MONEYS FROM THE APPROPRIATION THAT ARE ENCUMBERED AS OF JUNE 30, 2014 SHALL LAPSE AS OF THAT DATE.			
		DESIGN		1	1
		CONSTRUCTION		1,999	1,999
		TOTAL FUNDING	CCH	2,000C	2,000C
SUB401 - COUNTY OF MAUI					
17.		OLD HALEAKALA HIGHWAY SIDEWALK, MAUI			
		PLANS, DESIGN AND CONSTRUCTION OF SIDEWALK ALONG ONE SIDE OF OLD HALEAKALA HIGHWAY FROM KULA HIGHWAY TO PUKALANI STREET; PROVIDED THAT PARTIAL MATCHING FUNDS BE PROVIDED BY THE COUNTY OF MAUI.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			998
		TOTAL FUNDING	COM	C	1,000C
SUB501 - COUNTY OF KAUAI					
18.		FILIPINO COMMUNITY CENTER, KAUAI			
		PLANS TO CONSTRUCT THE FILIPINO COMMUNITY CENTER ON KAUAI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			30
		TOTAL FUNDING	COK	C	30C
		TABLE HEAD GOES HERE			

PART V. CAPITAL IMPROVEMENT PROGRAM PROVISOS

SECTION 37. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$1,855,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for Hawaii community development authority's community development districts and capital improvement program staff costs, statewide; provided further that the Hawaii community development authority shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; and provided further that the Hawaii community development authority shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 38. Provided that of the general obligation fund appropriation for plans, land acquisition, design, and construction for miscellaneous upgrade and improvements to veterans cemeteries statewide, services to veterans (DEF112), the sum of \$5,300,000 or so much thereof as may be necessary for fiscal year 2011-2012 shall be used for land acquisition for expansion of burial space for the veterans cemetery in Makawao, Maui.

SECTION 39. Provided that of the general obligation fund appropriation for plans, design, and construction for rockfall and flood mitigation at various locations, statewide, water and land development (LNR141), the sum of \$240,000 or so much thereof as may be necessary for fiscal year 2011-2012 shall be used for plans and construction to remove boulders in Niu Valley.

SECTION 40. Provided that of the general obligation fund appropriation for design and construction for repair, maintenance, and related improvements at state parks facilities, statewide, parks administration and operation (LNR806), the sum of \$2,500,000 or so much thereof as may be necessary for fiscal year 2011-2012 shall be used for construction of a test well to serve as the first phase in the construction of a ground water well to supplement the surface water system on the island of Maui (upcountry).

SECTION 41. Provided that of the special funds appropriation for school support (EDN 400), the sum of \$5,200,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for department of education capital improvement program project positions, statewide; provided further that the department of education shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvement program related positions; and provided further that the department of education shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 42. Provided that of the general obligation bond fund appropriation for land and natural resources – natural physical environment (LNR

906), the sum of \$2,540,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for department of land and natural resources capital improvement program staff costs, statewide; provided further that the department of land and natural resources shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvement program related positions; and provided further that the department of land and natural resources shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 43. Provided that of the special funds and other funds appropriations for airports administration (TRN 195), the sums of \$2,450,000 and \$100,000, respectively, or so much thereof as may be necessary for fiscal year 2011-2012 and the same sums or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for airports division capital improvement program project staff costs, statewide; provided further that the airports division shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvement program related positions; and provided further that the airports division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 44. Provided that of the revenue bond appropriation for harbors administration (TRN 395), the sum of \$1,735,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for harbors modernization plan harbors division capital improvement program staff costs, statewide; provided further that the harbors division shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvement program related positions; and provided further that the harbors division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 45. Provided that of the \$2,815,000 revenue bond funds and \$1,000,000 of other federal funds appropriated for Maui highways, (TRN 531) to be used for traffic operations improvements to existing intersections and highway facilities on Maui, the sum of \$1,500,000 or so much thereof as may be necessary shall be used for the left-turn lane and traffic signals at the intersection of Piilani highway and Mano o'kala street.

SECTION 46. Provided that of the special funds and other federal funds appropriations for highways administration (TRN 595), the sums of \$12,000,000 and \$6,000,000, respectively, or so much thereof as may be necessary for fiscal year 2011-2012 and the same sums or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for highways division capital improvements program project staff costs, statewide; provided further that the highways divi-

sion shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvement program related positions; and provided further that the highways division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 47. Provided that the department of education shall submit a quarterly report on progress made over the preceding three months towards implementation of all of the department's capital improvement program appropriations; provided further that for each active project the report shall provide for each cost element the total appropriation amount, lapse amount to date, expenditures to date, unallotted amount, allotment balance, encumbrance claim amount, encumbrance contract amount, and percent of work completed; provided further that the department shall report on all work undertaken using the appropriation for the first report and then work completed over the preceding three months for subsequent reports; and provided further that the first report shall be due to the legislature no later than October 15 for the first quarter of fiscal year 2011-2012 and subsequent reports shall be due fifteen days after the quarter ends.

SECTION 48. Provided that of the general obligation fund appropriation for Hawaii health systems corporation (HTH 212), the sum of \$15,000,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the Hawaii health systems corporation to correct health and safety deficiencies; provided further that of the total sum:

- (1) \$1,050,000 shall be used to upgrade the emergency power generators at Kona community hospital;
- (2) \$3,000,000 shall be used for facility expansion for imaging, laboratory, pharmacy, and other departments at Maui memorial medical center;
- (3) \$1,345,000 shall be used to upgrade the dietary plumbing and flooring at Maluhia health center;
- (4) \$1,680,000 shall be used for fire sprinklers, smoke detectors, and signage at Maui memorial medical center;
- (5) \$820,000 shall be used to upgrade the dietary electrical system and emergency generator at Leahi hospital;
- (6) \$1,600,000 shall be used for air conditioning upgrades at Maui memorial medical center;
- (7) \$2,000,000 shall be used for plumbing improvements at Maui memorial medical center;
- (8) \$1,000,000 shall be used for dietary equipment upgrades at Maui memorial medical center;
- (9) \$1,000,000 shall be used for elevator upgrades at Kula hospital; and
- (10) \$1,505,000 shall be used for a new nurse call system at Kula hospital.

SECTION 49. Provided that of the general obligation bond fund appropriation for school based budgeting (EDN 100), lump sum capital improvement project school building improvements statewide, the sum of \$10,288,000 or so much thereof as may be necessary for fiscal year 2011-2012 shall be expended by

the department of education to correct health and safety deficiencies; provided further that of the total sum:

- (1) \$250,000 shall be used for air conditioning of the administration building at Sunset Beach elementary school, Oahu; and
- (2) \$50,000 shall be used to upgrade the stage area and equipment for Mililani Uka elementary school, Oahu.

SECTION 50. Provided that of the general obligation fund appropriation for plans, design, construction and equipment for improvements to the University of Hawaii facilities, the sum of \$5,760,000 or so much thereof as may be necessary for fiscal year 2011-2012 shall be expended by the University of Hawaii as follows:

- (1) \$960,000 shall be used for design and construction of improvements to the entrance of the basketball offices;
- (2) \$300,000 shall be used for design and construction of two additional sand volleyball courts;
- (3) \$1,200,000 shall be used for design and construction of sun and rain covering for the tennis courts;
- (4) \$900,000 shall be used for design and construction of sun and rain covering for the diving portion of the swimming complex;
- (5) \$2,400,000 shall be used for design for renovation of the softball stadium, phase 2; and
- (6) \$600,000 shall be used for plans and design for renovations to the nursing and culinary wing at the north Hawaii education and research center, Hawaii; provided that no funds from this program ID shall be expended for this project unless all funding necessary for the completion of the project, including funding for construction and equipment, in their entirety, have been secured.

SECTION 51. Provided that of the general obligation bond fund and other federal funds appropriations for the department of defense, disaster warning and communication devices statewide, amelioration of physical disasters (DEF 110), the sums of \$1,500,000 and \$100,000 respectively, or so much thereof as may be necessary for fiscal year 2011-2012 shall be expended by the department of defense to correct health and safety deficiencies; provided further that of the total sum, \$85,000 shall be used to install a new outdoor warning siren on Haneoo Road in Hana, Maui located at parcel TMK 1-4-7-9.

SECTION 52. Provided that of the general obligation bond fund appropriation for public works – planning, design, and construction (AGS 221), the sum of 7,365,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for department of accounting and general services capital improvement program staff costs, statewide; provided further that the department of accounting and general services shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; and provided further that the department of accounting and general services shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 53. Provided that of the general obligation fund appropriation for design and construction for maintenance, improvement, and repair of public roads in the twentieth representative district, city and county of Honolulu (SUB201), the sums appropriated shall be used to address potholes, fissures, and other deficiencies resulting from weather, overuse, and lack of sufficient maintenance resources over time.

SECTION 54. Any law to the contrary notwithstanding, the appropriations under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-01	\$ 46,824 E
C-02	3,986,198 B
C-02	2,926 E
C-03	17,175 B
C-03	14,898 E
C-04	139,487 E
C-06	455,551 E
C-10	39,606 B
C-10	21,314 E
C-11	260,079 B
C-11	2,012,635 E
C-12	325,452 B
C-13	91,464 B
C-14	1,627,377 B
C-14	131,435 E
C-15	2,644,754 B
C-16	2,217,398 B
C-18	2,208,106 B
C-19	1,063 B
C-19	10,887 E
C-21	1,577,737 B
C-21	236,062 E

SECTION 55. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
C-01	\$ 2,356,749 B
C-01	205,883 E
C-02	654,500 B
C-02	1,000,000 E
C-04D	281,250 B
C-06	16,385,029 B
C-06B	72,665 B
C-08	135,541 B
C-10	172,730 B
C-10	60,216 E"

SECTION 56. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-03	\$ 134,298 B
C-10A	794,861 B
C-37A	295,898 B
C-42	2,163,815 B
C-48	7,336,453 B
C-67	79,000 B
C-73	29,037 B
C-75	2,895 B
C-76	3,649 B”

SECTION 57. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-12	\$ 61,989 B
C-13	116,325 B”

SECTION 58. Any law to the contrary notwithstanding, the appropriations under Act 259, Session Laws of Hawaii 2001, section 91, as amended and renumbered by Act 177, Session Laws of Hawaii 2002, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-04	\$ 927,443 B
C-05	2,460,595 B
C-07B	2,500 B
C-08	88,132 B
C-11C	64,878 B
C-11F	642,418 B
C-14	487,632 B”

SECTION 59. Any law to the contrary notwithstanding, the appropriations under Act 200, Session Laws of Hawaii 2003, section 77, as amended and renumbered by Act 41, Session Laws of Hawaii 2004, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-01	\$252,700 B
C-03	443,162 B
C-06	1 E
C-07.01	30,764 B
C-09.01	182,080 E
C-09.02	306,924 B
C-13	1,000,000 B
K-11.01	319,640 C”

SECTION 60. Any law to the contrary notwithstanding, the appropriations under Act 178, Session Laws of Hawaii 2005, section 85, as amended and renumbered by Act 160, Session Laws of Hawaii 2006, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-03	\$156,895 B
C-11	180,200 B
C-12	260,078 B
C-15	5,191 B
C-15	121,539 X
C-16	5,000 B
C-20	570,046 X
C-23	304,388 B
C-26	329,822 B
C-29	4,120 B ²

SECTION 61. Any law to the contrary notwithstanding, the appropriations under Act 213, Session Laws of Hawaii 2007, section 125, as amended and renumbered by Act 158, Session Laws of Hawaii 2008, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-24	\$148,948 R ²

SECTION 62. Any law to the contrary notwithstanding, the appropriations under Act 162, Session Laws of Hawaii 2009, section 62, as amended and renumbered by Act 180, Session Laws of Hawaii 2010, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-23	\$33,585,000 E
G-102	23,825,000 C
G-105	3,000,000 C ²

SECTION 63. Act 178, Session Laws of Hawaii 2005, as amended by Act 160, Session Laws of Hawaii 2006, is amended by adding a new section to read as follows:¹

SECTION 64. Act 178, Session Laws of Hawaii 2005, section 85, as amended by Act 160, Session Laws of Hawaii 2006, section 5, is amended by amending Item E-13.02 to read as follows:

"13.02 KOOLAULOA COMMUNITY HEALTH AND WELLNESS CENTER, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND
CONSTRUCTION FOR FACILITIES FOR
THE KOOLAULOA COMMUNITY HEALTH
AND WELLNESS CENTER. THIS PROJECT
QUALIFIES AS A GRANT, PURSUANT TO
CHAPTER 42F, HRS.

PLANS	25
DESIGN	25
<u>LAND ACQUISITION AND</u>	
CONSTRUCTION	550
TOTAL FUNDING HMS ¹	C 600C ²

“SECTION 91.0.1.¹ Provided that of the general obligation bond fund appropriation for facilities for the Koolauloa community health and wellness center (HTH907), the sum of \$550,000 for fiscal year 2006-2007 authorized for land acquisition and construction may be used for the acquisition of land and any improvements made thereto.”

SECTION 65. Any law to the contrary notwithstanding, the appropriations under Act 162, Session Laws of Hawaii 2009, as amended by Act 180, Session Laws of Hawaii 2010, is amended:

(1) By amending Item E-6 to read as follows:

“6. P90032 MAUI MEMORIAL MEDICAL CENTER, NEW DIALYSIS UNIT, MAUI

PLANS, DESIGN, CONSTRUCTION AND
EQUIPMENT FOR A NEW DIALYSIS
UNIT;] AND RELATED RENOVATIONS TO
ACCOMMODATE THE CONSTRUCTION OF
THE NEW DIALYSIS UNIT.

PLANS	1	
DESIGN	1	
CONSTRUCTION	6,630	
EQUIPMENT	568	
TOTAL FUNDING HTH	7,200C	C”

(2) By amending Item G-49 to read as follows:

“P90083 KEAUKAHA ELEMENTARY SCHOOL, HAWAII

PLANS, DESIGN, CONSTRUCTION AND
EQUIPMENT FOR A NEW CAFETERIA;]’
INCLUDING A FULL-SERVICE
CONVENTIONAL KITCHEN TO BOTH
PREPARE AND SERVE FOOD; GROUND AND
SITE IMPROVEMENTS; EQUIPMENT AND
APPURTENANCES.’

PLANS	80	
DESIGN	520	
CONSTRUCTION	7,200	
EQUIPMENT	200	
TOTAL FUNDING EDN	8,000B	B”

(3) By amending Item A-8 to read

“P90002 MULTIPURPOSE RESEARCH AND DEVELOPMENT FACILITY FOR THE PRODUCTION OF VALUE ADDED AGRICULTURAL PRODUCTS, MAUI

PLANS, DESIGN, AND CONSTRUCTION TO
REPAIR AND MODIFY FACILITIES AT MAUI
COMMUNITY COLLEGE TO FURTHER
THE VALUE ADDED AGRICULTURAL
INDUSTRY;] ~~PROVIDED THAT NO FUNDS
SHALL BE MADE AVAILABLE UNLESS
MATCHED DOLLAR-FOR-DOLLAR IN
CASH OR BY IN-KIND DONATIONS BY
THE PRIVATE SECTOR.] THIS PROJECT
IS DEEMED NECESSARY TO QUALIFY
FOR FEDERAL AID FINANCING AND/OR
REIMBURSEMENT.~~

PLANS	1	1
DESIGN	1	1
CONSTRUCTION	187	1,650
TOTAL FUNDING AGR	125C	1,100C
AGR	1N	1N
AGR	62R	550R
AGR	1S	1S”

“SECTION 62.1. ¹ Provided that of the appropriation for the department of agriculture (AGR141) to plan, design, and construct a multipurpose research and development facility for the production of value added agricultural products, Maui, the department shall oversee the development of an agriculture value-added facility in cooperation with and support of the university of Hawaii, Maui college; provided further that the appropriation shall be used to renovate a room in the old student center building to create value-added agriculture and other products in cooperation with the Maui farm bureau and other interested parties; and provided further that the department shall use this appropriation to leverage other project-related funds from other sources.”

PART VI. ISSUANCE OF BONDS

SECTION 66. AIRPORT REVENUE BONDS. The department of transportation is authorized to issue airport revenue bonds for airport capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, any additional principal amount as may be necessary by the department to pay interest on the airport revenue bonds during the estimated period of construction of the capital improvements program project for which the airport revenue bonds are issued, to establish, maintain, or increase reserves for the airport revenue bonds and to pay the expenses of issuance of the bonds. The airport revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from airports and related facilities under the ownership of the State or operated and managed by the department and the aviation fuel taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such parts of either thereof as the department may determine, including rents, landing fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of airports and related facilities and the furnishing and supplying of the services thereof, and passenger facility charges pursuant to section 261-5.5, Hawaii Revised Statutes, as amended, and as determined by the department. The expenses of the issuance of such airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the airport revenue fund and passenger facility charge special fund as determined by the department.

The governor, in the governor's discretion, is authorized to use the airport revenue fund and passenger facility charge special fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by airport revenue bond funds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 67. HARBOR REVENUE BONDS. The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in

such principal amount as shall be required to yield the amounts appropriated for such capital improvement program projects, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the estimated construction period of the capital improvement project for which such harbor revenue bonds are issued, to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the harbor special fund.

The governor, in the governor's discretion, is authorized to use the harbor revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by harbor revenue bond funds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 68. HIGHWAY REVENUE BONDS. The department of transportation is authorized to issue highway revenue bonds for highway capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such highway revenue bonds during the estimated period of construction of the capital improvement project for which such highway revenue bonds are issued, to establish, maintain, or increase reserves for such highway revenue bonds or highway revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of such highway revenue bonds. The aforementioned highway revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such highway revenue bonds, to the extent not paid from the proceeds of such highway revenue bonds, shall be payable from and secured by the revenues derived from highways and related facilities under the ownership of the State or operated and managed by the department, from the highway fuel taxes, vehicle weight taxes, and vehicle registration fees, levied and paid pursuant to sections 243-4, 248-8, 249-31, and 249-33, Hawaii Revised Statutes, and federal moneys received by the State or any department thereof that are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof

as the department may determine, and other user taxes, fees, or charges currently or hereafter derived from or arising through the ownership, operation, and management of highways and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such highway revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the state highway fund.

The governor, in the governor's discretion, is authorized to use the state highway fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by highway revenue bond funds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 69. UNIVERSITY OF HAWAII REVENUE BONDS. The University of Hawaii board of regents is authorized to issue revenue bonds for capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds, in principal amounts as are required to yield the amounts appropriated for capital improvement program projects, and if determined by the board of regents and approved by the governor, any additional principal amount deemed necessary by the board of regents to pay interest on the revenue bonds during the estimated period of construction of the capital improvement program project for which the revenue bonds are issued, to establish, maintain, or increase reserves for the revenue bonds, and to pay all or any part of the expenses related to the issuance of the revenue bonds. The revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as amended, except that the bonds shall be issued in the name of the University of Hawaii and not in the name of the State. The principal of and interest on the revenue bonds, to the extent not paid from the proceeds of the revenue bonds, shall be payable from and secured by the revenues derived from facilities under the ownership of the University of Hawaii or operated and managed by the University of Hawaii, or any part thereof as the board of regents may determine, including other moneys, rates, rents, fees, or charges currently or hereafter derived from or arising through the ownership, operation, and management of university facilities and the furnishings and supplying of the services thereof. The expenses related to the issuance of the revenue bonds, to the extent not paid from the proceeds of the bonds, shall be paid from the special funds of the University of Hawaii.

The governor, in the governor's discretion, is authorized to use University of Hawaii special funds to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by University of Hawaii revenue bonds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 70. HAWAIIAN HOME LANDS REVENUE BONDS. The department of Hawaiian home lands is authorized to issue Hawaiian home lands revenue bonds for Hawaiian home lands capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the

governor, such additional principal amount as may be deemed necessary by the department to pay interest on the Hawaiian home lands revenue bonds during the estimated period of construction of the capital improvements program project for which the Hawaiian home lands revenue bonds are issued, to establish, maintain, or increase reserves for the Hawaiian home lands revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of the bonds. The aforementioned Hawaiian home lands revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from Hawaiian home lands, revenues from available lands as defined in section 203 of the Hawaii Homes Commission Act, 1920, and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of Hawaiian home lands, available lands as defined in section 203 of the Hawaii Homes Commission Act, 1920, and related facilities. The expenses of the issuance of the Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the department of Hawaiian home lands revenue bond special fund.

The governor, in the governor's discretion, is authorized to use the department of Hawaiian home lands revenue bond special fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by Hawaiian home lands revenue bond funds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

PART VII. SPECIAL PROVISIONS

SECTION 71. GOVERNOR'S DISCRETIONARY POWERS. Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

SECTION 72. All general obligation bond funds used for a public undertaking, improvement, or system designated by the letter (D) shall have the bond principal and interest reimbursed from the special fund in which the net revenue, or net user tax receipts, or combination of both, of such public undertaking, improvement, or system, are deposited or credited. Bonds issued for irrigation and housing projects shall be reimbursed as provided by section 174-21 and chapter 201H, Hawaii Revised Statutes, respectively.

The governor is authorized to use, at the governor's discretion, the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the special land and development fund, or other appropriate special funds to finance the respective public undertaking, improvement, or system described above and authorized in this Act, where the method of financing is designated to be general obligation bond fund with debt service cost to be paid from the funds.

SECTION 73. The governor may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or any other prior or future act that has not lapsed; provided that the total expenditure of funds for all cost elements shall not exceed the total appropriations for that project; and provided further that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 74. After the objectives and purposes of appropriations made in this Act from the general obligation bond fund for capital improvement projects have been met, unrequired balances, except those from University of Hawaii projects, shall be transferred to the project adjustment fund appropriated in part II and described in part IV of this Act, and shall be considered a supplementary appropriation thereto; provided that all other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 2014, as provided in section 80 of this Act; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 75. If the authorized appropriations specified for capital improvement projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund, the governor may make supplemental allotments from the project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital investment cost elements; provided further that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 76. After the objectives and the purposes of appropriations made in this Act for capital investment purposes from the state educational facilities improvement special fund have been met, any unrequired balances shall be transferred to the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV, and shall be considered a supplementary appropriation thereto; and provided further that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 77. If the currently authorized appropriations specified for capital investment purposes listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the state educational facilities improvement special fund, the governor may make supplemental allotments from the special funded project adjustment fund for state educational facilities; provided further that the supplemental allotments from the special funded project adjustment fund for

state educational facilities shall not be used to increase the scope of the project and may only be made to supplement currently authorized capital investment project cost elements; and provided further that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 78. After the objectives and purposes of appropriations made in this Act from the general obligation bond fund for capital improvement projects for the University of Hawaii have been met, unrequired balances shall be transferred to the University of Hawaii project adjustment fund appropriated in part II and described in part IV of this Act, and shall be considered a supplementary appropriation thereto; and provided further that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 79. If the authorized appropriations specified for University of Hawaii capital improvement projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund, the governor may make supplemental allotments from the University of Hawaii project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital investment cost elements; provided further that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 80. Any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized under this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 2011-2013 that are unencumbered as of June 30, 2014, shall lapse as of that date; provided further that this lapsing date shall not apply to: (1) appropriations for projects described in section 36 of this Act where the means of financing is designated to be the state educational facilities improvement special fund, where such appropriations have been authorized for more than three years for the construction or acquisition of public school facilities; and (2) non-general fund appropriations for projects described in section 36 of this Act where such appropriations have been deemed necessary to qualify for federal aid financing and reimbursement.

SECTION 81. Where it has been determined that changed conditions, such as a reduction in the particular population being served, permit the reduction in the scope of a capital improvement project described in this Act, the governor may authorize such reduction of project scope; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 82. In releasing funds for capital improvement projects, the governor shall consider legislative intent and the objectives of the user agency and its programs; the scope and level of the user agency's intended service; and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State; provided further that agencies responsible for construction shall take into consideration legislative intent, the objectives of the user agency and its programs, and the scope and level of the user agency's intended service and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 83. With the approval of the governor, designated expending agencies for capital improvement projects authorized in this Act may delegate to other state or county agencies the implementation of projects when it is determined advantageous to do so by both the original expending agency and the agency to which expending authority is to be delegated; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 84. Where county capital improvement projects are partially or totally funded by state grants as authorized in this Act or any other act of the legislature, this fact should be appropriately acknowledged during construction and upon completion of these projects.

SECTION 85. The governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects of natural disasters or unforeseen emergencies, when the effects of the natural disasters or unforeseen emergencies create an urgent need to pursue a course of action that is in the best interest of the State; provided further that no funds shall be expended without a formal declaration of a natural disaster or emergency by the governor; and provided further that the governor shall use the project adjustment fund authorized in part II and described in part IV to accomplish the purposes of this section; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 86. Notwithstanding any provision in part III of this Act, the governor is authorized to transfer savings or unrequired balances as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of natural disasters or other unforeseen emergencies; provided that the effects of such natural disasters or emergencies create an urgent need to pursue a course of action that is in the best interest of the State; provided further that the use of such funds does not conflict with general law; and provided further that no funds shall be expended without a formal declaration of a natural disaster or emergency by the governor; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 87. No appropriation authorized in this Act for expenditure by a political subdivision of this State shall be considered to be a mandate to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act constitutes such a mandate within the provisions of section 5 of article VIII of the Hawaii State Constitution, such authorization shall be void and, in the case of capital improvement appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized for such projects shall be correspondingly decreased.

SECTION 88. Whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature that affects the appropriations made by this Act, the governor shall transfer the necessary funds and positions to the proper expending agency as provided by law.

SECTION 89. If the State should assume the direct operation of any non-governmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, of such non-governmental agency. This credit shall be applicable regardless of when such acquisition takes place.

SECTION 90. If unanticipated federal funding cutbacks diminish or curtail essential, federally funded state programs, the governor may utilize savings as determined to be available from other state programs for the purpose of maintaining such programs until the next legislative session; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 91. The governor may approve the expenditure of federal funds, including federal stimulus funds, that are in excess of levels authorized by the legislature; provided further that the governor may allow for an increase in the federal fund authorization ceiling for the program to accommodate the expenditure of such funds; provided further that prior to the governor's approval to expend these funds, the governor shall submit a report to the legislature; provided further that the report shall include the date when the program to receive the federal funds was first notified that additional federal funds may be available, the date that additional federal funds were known to be available, the reasons why additional federal fund appropriations were not sought during the preceding legislative session, and an explanation of the public benefit; provided further that if federal funds are received as a result of a natural or manmade disaster, the governor shall submit notification to the legislature within five days after the governor's approval to expend funds has been granted; and provided further that the governor shall submit a summary report of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 92. Where an agency is authorized to secure funds or other property from private organizations or individuals to be expended or utilized in connection with any authorized program, the agency, with the governor's approval, may enter into such undertaking, provided that the provisions of the

undertaking comply with applicable state constitutional and statutory requirements; and provided further that the governor shall notify the legislature within five days of each use of this authority and submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 93. Except as otherwise provided by general law, negotiations for the purchase of land by state agencies shall be subject to the approval of the governor and the department of land and natural resources, or other appropriate agency; provided further that private lands may be acquired for the purpose of exchange for federal lands when the department of land and natural resources and the governor determine that the acquisition and exchange are necessary for the completion of any project specifically authorized by this Act.

SECTION 94. Except as otherwise provided, or except as prohibited by specific grant conditions, all federal or non-general fund reimbursements received by state programs shall be returned to the general fund or fund of originating expenses.

SECTION 95. Unless otherwise provided in this Act, the governor is authorized to transfer operating funds between appropriations within the same fund, within an expending agency, for operating purposes; provided further that the governor shall submit a report to the legislature within five days of each use of this authority; provided further that the report shall include the date of transfer, the amount of the transfer, the program ID from which funds were transferred, the program ID to which funds were transferred, the impact to the program ID funds are transferred from, and a detailed explanation of the public purposes served by the transfer of resources; and provided further that the governor shall submit to the legislature a summary report containing the aforementioned information for each use of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 96. Notwithstanding any provision to the contrary, the director of finance, with the approval of the governor, shall transfer into retirement benefit – state (BUF 741) \$88,200,000 for fiscal year 2011-2012 and \$88,200,000 for fiscal year 2012-2013 for labor savings attributable to collective bargaining agreements for all bargaining units and pursuant to any executive memoranda that results in salary savings for all employees not included under collective bargaining in respective state agencies; provided further that the governor shall submit a report to the legislature within five days of each transfer that shall include the date of the transfer, the amount of the transfer, the program ID from which funds are transferred, and the collective bargaining unit for which the transfer was made; and provided further that the governor shall submit to the legislature a summary report for all transfers by December 1 for the previous twelve-month period.

SECTION 97. Notwithstanding any provision to the contrary, the director of finance, with the approval of the governor, shall transfer into health premium payments - state (BUF 761) \$50,000,000 for fiscal year 2011-2012 and \$50,000,000 for fiscal year 2012-2013; provided further that in making each transfer, the governor shall consider the legislature's intent that the administration assess state needs and make appropriate reductions to programs that are

consistent with an effort to reprioritize state government; provided further that the governor shall submit a report to the legislature within five days of each use of this authority that shall include the date of the assessment, the amount of the assessment, the program ID from which funds were assessed, a detailed explanation of the reason for which funds were transferred from a particular program ID, including a detailed report of any performance measurements or standards used in evaluating such assessment, and the impact to the program ID from which funds are transferred; from and provided further that the governor shall submit to the legislature a summary report for all transfers by December 1 for the previous twelve-month period.

SECTION 98. Except as otherwise provided in this Act, each department or agency is authorized to transfer positions within its respective authorized position ceiling for the purpose of maximizing the utilization of personnel resources and staff productivity; provided further that all such actions shall be with the prior approval of the governor and shall be consistent with appropriations provided in this Act and with part II of chapter 37, Hawaii Revised Statutes; provided further that the governor shall submit a report to the legislature within five days of each use of this authority; provided further that the report shall include the date of the transfer, the position transferred, the program from which the position was transferred, the program to which the position was transferred, responsibilities of the position prior to transfer, the responsibilities of the position after the transfer, and the manner in which the transfer maximizes the utilization of personnel resources and staff productivity; and provided further that the governor shall submit to the legislature a summary report of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 99. Any law or provision to the contrary notwithstanding, in expending funds for social welfare programs, education programs, and other programs and agencies having appropriations that are based on population and workload data as specified in the executive budget document, only so much as is necessary to provide the level of services intended by the legislature shall be expended. Affected agencies shall reduce expenditures below appropriations under procedures prescribed by the department of budget and finance in the event actual population and workload trends are less than the figures projected; and provided further that the department of budget and finance shall notify the legislature within five business days of each application of this proviso and submit a report of all applications of this proviso for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 100. With the approval of the governor, agencies that use appropriations authorized in part II of this Act for audit services may delegate that responsibility and transfer funds to the internal post audit program (AGS 104), when it is determined by such agencies that it is advantageous to do so; and provided further that the governor shall submit to the legislature a summary report of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 101. With the approval of the governor, expending agencies that use appropriations authorized in part II of this Act for planning, land ac-

quisition, design, construction, and equipment for repair and alterations may delegate responsibility and transfer funds to public works – planning, design and construction (AGS 221) for the implementation of the repair and alterations, when it is determined by the agencies that it is advantageous to do so; and provided further that the governor shall submit to the legislature a summary report of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 102. Agencies with appropriations authorized in part II of this Act for risk management costs shall transfer funds authorized for that purpose to the state risk management and insurance administration (AGS 203) for the administration and implementation of state risk management costs and expenses, except as otherwise provided by law.

SECTION 103. With the approval of the governor, the Hawaii health systems corporation in the department of health may transfer to the department of human services funds appropriated to the Hawaii health systems corporation for the care and treatment of patients, whenever the department of human services can utilize such funds to match federal funds that may be available to help finance the cost of outpatient, acute hospital, or long-term care of indigents or medical indigents in designated critical access hospitals; and provided further that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 104. With the approval of the governor, the department of health may transfer to the department of human services funds appropriated to the department of health for the care and treatment of patients, whenever the department of human services can utilize such funds to match federal funds to finance the cost of outpatient, hospital, or skilled nursing home care of indigents or medical indigents; and provided further that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 105. The department of human services is authorized to enter into agreements with the department of health to furnish outpatient, hospital, and skilled nursing home care of indigents or medical indigents and to pay the department of health for such care; provided that with the approval of the director of finance, the department of health may deposit part of such receipts into the appropriations from which transfers were made as provided elsewhere in this Act; and provided further that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 106. Provided that of the appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$2,500 for fiscal year 2011-2012 and the sum of \$2,500 in fiscal year 2012-2013 shall be made available in each department to be established as a separate account for a protocol fund to be expended at the discretion of the executive head

of the department or agency (i.e., director, chairperson, comptroller, adjutant general, superintendent, president, or attorney general).

SECTION 107. Provided that of the general fund appropriation for Hawaii state public library system (EDN 407), the sum of \$2,500 for fiscal year 2011-2012 and the sum of \$2,500 for fiscal year 2012-2013 may be used to establish a separate protocol account to be expended at the discretion of the state librarian.

SECTION 108. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$4,000 for fiscal year 2011-2012 and the sum of \$4,000 for fiscal year 2012-2013 may be used to establish a separate protocol account to be expended at the discretion of the director of finance for the promotion and improvement of state bond ratings and sales; provided further that the director of finance shall prepare a detailed report of all expenditures made from the protocol account that shall include the date of any expenditure, the purpose of any expenditure, the name of the entity that received the funds, and an explanation of the manner in which the expenditures promoted and improved the state bond ratings and sales; and provided further that the director of finance shall submit this report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 109. Provided that the department of budget and finance shall post on its website all finance memorandums, executive memorandums, and administrative directives on the same day that the memorandums and directives are distributed; provided further that all attachments to the memorandums and directives shall also be posted; provided further that all finance memorandums, executive memorandums, and administrative directives issued since January 1, 2000, shall also be posted; provided further that all documents submitted to the legislature pursuant to chapter 37, Hawaii Revised Statutes, since December 1, 2008, shall be posted; and provided further that all governor's messages requesting adjustments to these documents shall also be posted.

SECTION 110. Provided that of the special fund appropriation for spectator events and shows - Aloha Stadium (AGS 889), the sum of \$2,500 for fiscal year 2011-2012 and the sum of \$2,500 for fiscal year 2012-2013 may be expended at the discretion of the stadium manager for promotion and other stadium related purposes.

SECTION 111. Except as otherwise provided, the appropriation for the office of the governor (GOV 100) shall be expended at the discretion of the governor.

SECTION 112. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100) shall be expended at the discretion of the lieutenant governor.

SECTION 113. Provided that of the appropriations authorized for executive programs in part II of this Act for fiscal year 2011-2012 and fiscal year 2012-2013, settlements and judgments approved by the legislature in H.B. No. 1001, H.D. 2, S.D. 2, C.D. 1,² the Claims Bill, shall be funded within each program's departmental allocation for the respective fiscal year.

SECTION 114. Provided that if the amount of settlements and judgments approved by the legislature in H.B. No. 1001, H.D. 2, S.D. 2, C.D. 1² the Claims Bill, exceeds program allocations for fiscal year 2011-2012 or fiscal year 2012-2013, as applicable, for the purposes of meeting such obligations:

- (1) A department, with the approval of the governor, is authorized to utilize allocated savings determined to be available from any other program within the department; and
- (2) Unless otherwise provided by general law, the governor is authorized to transfer funds between allocations of appropriations within a department for the purposes of paying settlements and judgments of a program;

provided further that the governor shall submit a report of all uses of this authority for the previous twelve month period no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 115. The director of finance is authorized to expend general fund, special fund, and revolving fund savings or balances determined to be available from authorized general fund, special fund, and revolving fund program appropriations, up to an aggregate total of \$20,000,000 for fiscal year 2011-2012 and \$20,000,000 for fiscal year 2012-2013, for municipal lease payments under financing agreements entered into pursuant to chapter 37D, Hawaii Revised Statutes, to finance the acquisition of depreciable assets, including but not limited to automobiles, computers, printers, and telecommunications equipment; and provided further that designated expending agencies (including the department of education and the University of Hawaii) for municipal lease payments and for depreciable assets, including but not limited to automobiles, computers, printers, and telecommunications equipment authorized in this Act may delegate to the director of finance the implementation of such acquisitions when it is determined by all involved agencies that it is advantageous to do so; and provided further that the governor shall submit to the legislature a summary report of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 116. Provided that for all notification and reporting requirements in this Act, copies of the notification or report shall be submitted to the senate president's office, the speaker of the house of representatives' office, the senate ways and means committee chairperson's office, the house of representatives' finance committee chairperson's office, and to the appropriate standing committees' chairperson's office that has oversight responsibilities over the state program affected; and provided further that the notification and report shall be posted on the website of the agency responsible for submitting the notification or report.

SECTION 117. Notwithstanding any provision in part III of this Act, the governor is authorized to transfer savings or unrequired balances as may be available of general funds from any program in this Act to supplement the department of land and natural resources' fire-fighter's contingency fund; provided further that these funds shall be used to prevent, control, and extinguish wildland fires within forest reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves, and to fulfill mutual aid agreements in cooperation with fire control agencies of the counties and federal government.

SECTION 118. Provided that of the special fund appropriation for native resources and fire protection program (LNR 402), the sum of \$3,000,000 or so much thereof as may be necessary and available for fiscal year 2011-2012 and the sum of \$3,000,000 or so much thereof as may be necessary and available for fiscal year 2012-2013 shall be expended by the department of land and natural resources as directed by the Hawaii invasive species council to prevent the introduction of invasive species, implement invasive species control, conduct research and outreach, and eradicate established invasive species; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to their respective funds; provided further that the funds to be expended for the program are matched by an equivalent amount, up to \$3,000,000, in new federal, county, private, and other non-state funds or in-kind services for each fiscal year; provided further that the department shall jointly work with other agencies and the community; and provided further that portions of this appropriation may be transferred to other state departments to be expended for activities related to the statewide invasive species prevention, control, research, and outreach partnership program.

SECTION 119. Provided that no funds, including federal funds, shall be expended to fill any position not authorized by the legislature; provided further that this prohibition shall not apply to:

- (1) The University of Hawaii and the Hawaii health systems corporation;
- (2) Positions entirely federally funded;
- (3) Positions established pursuant to section 76-16(b)(3), (12), (13), (21), and (23), Hawaii Revised Statutes; or
- (4) Where an agency has explicit statutory authorization to establish positions to accomplish necessary functions;

provided further that with regard to any of the positions identified in paragraphs (1), (2), (3), or (4), the respective agency or department shall submit a report to the legislature within five days of each use of this provision; provided further that the report shall include:

- (1) Authority used to establish the position;
- (2) Date the position was established;
- (3) Projected date the position will be filled;
- (4) Amounts projected to be expended in fiscal year 2011-2012 and in fiscal year 2012-2013;
- (5) Source of funds used to pay for the position; and
- (6) Functions to be performed by the position;

and provided further that the department of budget and finance shall submit to the legislature a summary report of all uses of this provision for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 120. Provided that in releasing funds for operating program appropriations, the governor shall consider legislative intent and the objectives of the user agency and its programs; the scope and level of the user agency's intended service; and the means, efficiency, and economics by which the appropriation will meet the objectives of the user agency and the State; and provided further that agencies responsible shall take into consideration legislative intent, the objectives of the user agency and its programs, and the scope and level of the user agency's intended service, and expend funds to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 121. Provided that the department of business, economic development and tourism shall prepare a report that shall include but not be limited to a cost benefit analysis of consolidating the Hawaii strategic development corporation and the high technology development corporation into a single agency within the department; provided further the report shall include a detailed narrative on the results of the cost benefit analysis; provided further the report shall include impact statements from each of the three agencies' administrators; and provided further that the department shall submit the report to the legislature no later than forty days prior to the convening of the 2012 regular session.

SECTION 122. Provided that the department of business, economic development and tourism shall prepare a comprehensive report on the department's efforts to reorganize that shall include:

- (1) A chronology of all reorganizations implemented for the prior six years;
- (2) The impact of all reduction in force actions and identification of all impacted positions by program ID;
- (3) Department-wide and agency specific goals of current reorganization efforts;
- (4) Impacted position titles and numbers by program ID; and
- (5) Impact statements from each affected division's administrator;

and provided further the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 regular session.

SECTION 123. Provided that the department of business, economic development and tourism shall prepare a report on its energy program operations to include but not be limited to:

- (1) A comprehensive review of all energy contracts including the contract term, cost, means of financing, purpose, projected returns, and priority level;
- (2) Budgeted and actual operating expenditures for the prior fiscal year and budgeted and estimated operating expenditures for the current fiscal year and planned expenditures for the next two fiscal years by cost element and means of financing;
- (3) A list of energy program staff that shall include position title, position number, salary, means of financing, date established, and responsibilities;
- (4) A plan of action to generate funds for programs that are expected to continue beyond the availability of federal grants; and
- (5) Updated cost projections for program needs beyond those afforded by federal sources; and

provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 regular session.

SECTION 124. Provided that the department of transportation shall prepare a report on all travel-related expenses compensated by non-state organizations by program ID that shall include a detailed list of each instance of travel identifying:

- (1) Position traveling and the purpose;
- (2) Destination and departure and arrival dates;
- (3) Itemization of all compensated costs and the value; and
- (4) Organization compensating the travel and the reason;

provided further that the report shall encompass travel from December through November preceding the date the report is submitted; and provided further that

the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 125. Provided that the department of transportation shall prepare a report on all budgeted and actual expenditures for special maintenance programs by program ID and means of financing for the prior three fiscal years, budgeted and estimated for the current fiscal year, and budgeted and projected for the next fiscal year; provided further that all variances from budgeted amounts shall be explained; and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 126. Provided that the department of human services shall prepare a report that shall include but not be limited to a detailed financial plan by means of financing for all funds expended under the TANF and TAONF programs that shall encompass projected and actual expenditures for the prior two fiscal years, projected and estimated expenditures for the current fiscal year, and projected expenditures for the next two fiscal years; provided further that all variances shall be explained; provided further that the financial plan shall include the balance of funds in the TANF Federal Reserve Fund for each of the fiscal years in the report; provided further that the financial plan shall include program ID numbers, contract names and priority numbers for each line item; and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 127. Provided that the department of human services shall prepare a report on the TANF and TAONF programs for the prior and current fiscal year that shall include:

- (1) The program's measures of effectiveness, projected, and actual outcomes;
- (2) Work participation rates for two-parent families and all families included in calculation of the federal work participation rate;
- (3) A listing of Hawaii businesses participating in TANF and TAONF funded work programs and amounts subsidized;
- (4) A listing of all contracts funded by the TANF and TAONF programs categorized by purpose that identifies program priority levels, amounts contracted, means of financing, an explanation of the benefits derived from each contract, and identification of all laws that require the state to provide the service; and
- (5) Utilization levels of each contract funded by the TANF and TAONF programs and populations served;

and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 128. Provided that the department of human services shall prepare a report on the TANF and TAONF programs that shall include by program ID and means of financing the amounts and descriptions of use of all TANF and TAONF funds budgeted for the current fiscal year and the subsequent fiscal year; provided further that the report shall also include by program ID the amounts and descriptions of use of all general funds that may be used to meet maintenance of effort requirements for TANF funds budgeted for the current fiscal year and the subsequent fiscal year; and provided further that the

department shall submit this report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

SECTION 129. Provided that the department of Hawaiian home lands shall prepare a financial plan for the ensuing six years that shall include projected amounts and sources of revenue, details of projected expenditures, projected fund balances, and descriptions of major projects and methods of financing; and provided further that the department shall submit the plan to the legislature no later than thirty days prior to the convening of the 2012 regular session.

SECTION 130. Provided that the superintendent's office (EDN 300) shall submit a report to the legislature each quarter of fiscal year 2011-2012 and fiscal year 2012-2013 containing a listing of cases and incidents resulting in any audit or investigation; provided further that the reports shall include the date the audit or investigation began, date completed, type of case or incident being investigated, a summary of investigation, and upon request by a legislative committee a copy of the actual audit or investigation report; and provided further that any information deemed personally identifiable shall be redacted by the department prior to submittal.

SECTION 131. Provided that of the general fund appropriation for the department of education, excluding charter schools, no funds for fiscal year 2012-2013 shall be expended for home-to-school transportation costs not mandated by state or federal law; provided further that the department shall prepare a report that includes:

- (1) A comprehensive analysis of alternatives for providing student transportation, including mandated student transportation services, including but not limited to the elimination of transportation services not mandated by law, route consolidation and reduction scenarios, methods of reducing contracted costs, implementation of transportation services with state personnel and/or buses, partnerships with county agencies, and the use of tripper service as defined in 49 CFR 605.3;
- (2) A cost benefit analysis of each alternative identified;
- (3) A prioritized listing of student transportation routes, the reason the route is a priority, the projected number of students serviced, and the projected cost of providing transportation service for the route;
- (4) An examination of fee schedules and evaluation of various pricing strategies;
- (5) An evaluation of how student transportation is successfully administered and costs are managed and paid for in at least four other jurisdictions;
- (6) Recommendations on the options identified in the report; and
- (7) Identification of the actual costs for all student transportation services, including mandated, for the prior two fiscal years and projected costs for the current fiscal year by means of financing, contract, and route and identification of those costs;

provided further that the department shall submit the report to the legislature no later than forty days prior to the convening of the 2012 regular session; and provided further that the legislature may appropriate funds for student transportation services not mandated by state or federal law upon receipt and evaluation of the report.

SECTION 132. Provided that the department of education, excluding charter schools, shall prepare a report on STEM and creative media programs and in that report: define STEM and the applicable programs within the department, list and describe applicable creative media programs to be highlighted in the report, specify the approximate number of eligible students and the number of participating students for the STEM and creative media programs by program; provided further that the report shall evaluate projects demonstrating cost-effective outcomes and improved student performance in STEM and creative media experiential learning programs; provided further that the report shall encompass all initiatives and outcomes, including those achieved for the pilot HI-EST Academies initiative between 2007-2011; and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 regular session.

SECTION 133. Provided that the department of public safety shall prepare a report on overtime costs that shall include the following:

- (1) Amount budgeted for overtime by program ID;
- (2) Amount expended on overtime by program ID;
- (3) Explanation of the department's plans to better reflect the true cost of overtime by submitting requests to the legislature to transfer funds currently being used for overtime from where the funds are budgeted to the overtime cost category; and
- (4) Strategies the department will use to reduce such expenditures in the future;

provided further that the report shall include actual expenditures on overtime from fiscal year 2003-2004 to the prior fiscal year; provided further that the report shall include to-date and projected expenditures on overtime for the current fiscal year to fiscal year 2015-2016; and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions.

PART VIII. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 134. If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 135. If any manifest clerical, typographical, or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 136. Material to be repealed is bracketed and stricken. New material is underscored.

SECTION 137. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)

Notes

1. So in original.
2. Did not pass legislature.

ACT 165

S.B. NO. 1088

A Bill for an Act Relating to Unemployment Insurance Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§383- Good cause for separation from part-time employment. (a) In applying the provisions of section 383-30(1), an individual who has established eligibility based on full-time employment may be found to have good cause for voluntarily separating from subsequent part-time employment based on any of the following conditions:

- (1) Loss of full-time work with a regular employer made it economically unfeasible to continue part-time employment;
- (2) The part-time employment was outside the individual's customary occupation and would not have been considered suitable work at the time the individual accepted part-time employment. In determining whether an individual is reasonably fitted for a particular job, the department shall consider:
 - (A) The degree of risk involved to the individual's health, safety, and morals;
 - (B) The individual's physical fitness;
 - (C) The individual's prior training;
 - (D) The individual's experience;
 - (E) The individual's prior earnings;
 - (F) The length of the individual's unemployment;
 - (G) The individual's prospects for obtaining work in the individual's customary occupation;
 - (H) The distance of available work from the individual's residence; and
 - (I) The individual's prospects for obtaining local work.

As used in this paragraph, "suitable work" means work in the individual's usual occupation or work for which the individual is reasonably fitted;
- (3) The employer failed to provide sufficient advance notice of a work schedule change;
- (4) There was a work schedule conflict with other concurrent part-time or full-time employment;
- (5) A real, substantial, or compelling reason, or a reason that would cause a reasonable and prudent employee, genuinely and sincerely desirous of maintaining employment, to take similar action and to try reasonable alternatives before terminating the employment relationship;
- (6) Change in working conditions and the change is prejudicial or detrimental to the health, safety, or morals of the employee;
- (7) Change in terms and conditions of employment, including change in rate of pay, position or grade, duties, days of work, or hours of work;
- (8) Discrimination that violates federal or state laws regarding equal employment opportunity practices;
- (9) Change in the employee's marital or domestic status;

- (10) Acceptance of a definite, firm offer made of other employment where the offer is subsequently withdrawn and the former employer refuses to rehire the employee;
- (11) Retirement under a mandatory requirement imposed by a collective bargaining agreement;
- (12) Evidence that the employee was a victim of domestic or sexual violence, including any circumstance that causes a reasonable employee to believe that other available alternatives, such as a leave of absence, a transfer of jobs, or an alternate work schedule, would not be sufficient to guarantee the safety of the employee and that separation from employment was necessary to address the resulting physical and psychological effects, to seek or reside in an emergency shelter, or to avoid future domestic or sexual violence. Evidence includes police records, court records, statements from the individual, a volunteer of a victim services organization, the employee's attorney or advocate, a member of the clergy, medical, or other professional from whom the employee has sought assistance related to the domestic or sexual violence, or other corroborating evidence. As used in this paragraph, "domestic or sexual violence" includes domestic abuse, sexual assault, or stalking; or
- (13) Any other factor relevant to a determination of good cause.
 - (b) For purposes of this section:
"Part-time" means less than twenty hours per week or on-call or casual or intermittent."

SECTION 2. Section 383-1, Hawaii Revised Statutes, is amended by amending the definition of "attached to a regular employer" to read as follows:
"Attached to a regular employer" means:

- (1) The employee is being offered work each week by the employee's regular employer; or
- (2) If no work is being offered:
 - (A) The employer is maintaining the individual on the payroll by paying for a medical insurance plan or by maintaining the employee's sick leave or vacation credits; or
 - (B) There is a definite return to work date with the same employer [within eight weeks]."

SECTION 3. Section 383-29.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~"(b) [Continued claim certifications for partial benefits shall be filed as follows:~~

- (+) An individual may file a continued claim certification for partial unemployment benefits in person, by mail, by telephone, or by using other alternative claim filing procedures as instructed or authorized by the department and in the manner prescribed by the department with respect to each week of the individual's partial unemployment. A continued claim certification shall be filed in the same manner as prescribed in rules of the department for continued claim certifications for total or part-total unemployment benefits and not later than twenty-eight days from the end of the week for which the individual claims benefits; provided that an individual shall not be required to file a continued claim certification earlier than two weeks from the date wages are paid for a claim period.

- (2) ~~If, after a week of partial unemployment, eight or fewer consecutive weeks of total unemployment follow the week of partial unemployment, the weeks of total unemployment may be deemed weeks of partial unemployment. However, if total unemployment extends beyond eight consecutive weeks, the individual shall be deemed totally unemployed.~~
- (3) ~~Notwithstanding paragraph (2), the department may extend partial unemployment beyond eight consecutive weeks of total unemployment under conditions including but not limited to:~~
- ~~(A) The individual is retained in an employer-employee relationship;~~
 - ~~(B) The individual is under obligation to reserve services for the employer; and~~
 - ~~(C) The individual has a definite or reasonably imminent return to work date.]”~~

SECTION 4. Section 383-29.8, Hawaii Revised Statutes, is amended to read as follows:

~~“[§383-29.8] Partial unemployment; waivers. (a) The registration for work requirements under section 383-29(a) [may] shall be waived for individuals who are partially unemployed, as defined in section 383-1.~~

~~(b) An individual [may] shall be exempted from the work search requirements as determined by rules of the department, or be subject to modified work search requirements as authorized by the department if the individual is waived from the registration for work requirements, as defined in section 383-1.”~~

SECTION 5. Act 170, Session Laws of Hawaii 2009, section 7, as amended by Act 76, Session Laws of Hawaii 2010, section 3, is amended to read as follows:

~~“SECTION 7. This Act shall take effect on July 1, 2009[, and shall be repealed on July 1, 2012; provided that on July 1, 2012, sections 383-1 and 383-29(a), Hawaii Revised Statutes, shall be reenacted in the same form in which they read on June 30, 2009; provided further that the definition of “registered for work” shall not be repealed when this Act is repealed and section 383-1 is reenacted pursuant to this section].”~~

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved June 27, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 166

H.B. NO. 467

A Bill for an Act Relating to Whistleblowers' Protection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that public employees may possess information about improper activities such as waste, fraud, and misconduct occur-

ring in state and local government, but may not report the information because of fear of retaliation by their supervisors. Greater protection for public employees is necessary to encourage them to come forward with information that will help ensure the efficiency and integrity of state and local government.

The purpose of this Act is to provide additional protection to public employees who report violations of the law and other improper activities.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§78- Whistleblowers; notice. (a) Upon receipt of any complaint made pursuant to section 378- , the department of labor and industrial relations shall inform the complainant of the complainant’s rights under the law.

(b) The department of labor and industrial relations shall prescribe the content and the posting of notices pertaining to the application of sections 378- and 396-8(e).”

SECTION 3. Chapter 378, Hawaii Revised Statutes, is amended by designating sections 378-61 to 378-69, as subpart A and inserting a title before section 378-61, to read as follows:

“A. General Provisions”

SECTION 4. Chapter 378, Hawaii Revised Statutes, is amended by adding a new subpart to part V to be appropriately designated and to read as follows:

“B. Public Employees

§378- Protected disclosure by a public employee. (a) In addition to any other protections under this part, a public employer shall not discharge, threaten, or otherwise discriminate against a public employee regarding the public employee’s compensation, terms, conditions, location, or privileges of employment because the public employee, or a person acting on behalf of the public employee, reports or is about to report to the public employer or a public body, verbally or in writing:

- (1) Any violation or suspected violation of a federal, state, or county law, rule, ordinance, or regulation; or
- (2) Any violation or suspected violation of a contract executed by the State, a political subdivision of the State, or the United States, unless the employee knows that the report is false.

(b) Every public employer shall post notices pertaining to the application of sections 378- and 396-8(e), as shall be prescribed by the department of labor and industrial relations, in conspicuous places in every workplace.”

SECTION 5. Section 378-61, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Public employee” means any employee of the State or any county, or the political subdivision and agencies of the State or any county, any employee under contract with the State or any county, any civil service employee, any probationary or provisional employee of the State or county, and any employee of any general contractor or subcontractor undertaking the execution of a contract with a governmental contracting agency, as defined in section 104-1.

“Public employer” means the State and any county, the political subdivisions and agencies of the State and any county, and any general contractor or subcontractor undertaking the execution of a contract with a governmental contracting agency, as defined in section 104-1, and includes any agent thereof.”

SECTION 6. Section 378-64, Hawaii Revised Statutes, is amended to read as follows:

“[§378-64] Remedies ordered by court. A court, in rendering a judgment in an action brought pursuant to this part, shall order, as the court considers appropriate, reinstatement of the employee[,] or public employee, payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney’s fees and witness fees, if the court determines that the award is appropriate.”

SECTION 7. Section 378-65, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person or public employer who violates this part shall be fined not less than \$500 nor more than \$5,000 for each violation.”

SECTION 8. Section 378-66, Hawaii Revised Statutes, is amended to read as follows:

“[§378-66] Collective bargaining and confidentiality rights, takes precedence. (a) This [part] subpart shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement, nor to permit disclosures which would diminish or impair the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection.

(b) Where a collective bargaining agreement provides an employee rights and remedies superior to the rights and remedies provided herein, contractual rights shall supersede and take precedence over the rights, remedies, and procedures provided in this [part.] subpart. Where a collective bargaining agreement provides inferior rights and remedies to those provided in this [part,] subpart, the provisions of this [part] subpart shall supersede and take precedence over the rights, remedies, and procedures provided in collective bargaining agreements.”

SECTION 9. Section 378-67, Hawaii Revised Statutes, is amended to read as follows:

“[§378-67] Compensation for employee participation in investigation, hearing, or inquiry. This [part] subpart shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by a public body in accordance with section 378-62 of this [part.] subpart.”

SECTION 10. Section 378-68, Hawaii Revised Statutes, is amended to read as follows:

“[§378-68] Notices of employee protections and obligations. An employer shall post notices and use other appropriate means to keep the employ-

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er's employees informed of their protections and obligations under this ~~[part.] subpart.~~"

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 12. This Act shall take effect upon its approval.

(Approved June 27, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 167

S.B. NO. 34

A Bill for an Act Relating to Tax Appeals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 232-5, Hawaii Revised Statutes, is amended to read as follows:

"§232-5 Small claims. (a) The tax appeal court shall establish by rule a small claims procedure that, to the greatest extent practicable, shall be informal[-]; provided that:

- (1) No pretrial discovery shall be allowed without the prior written approval of the court; and
- (2) Costs and fees awarded to the prevailing party shall be limited to fees paid directly to the court in the course of conducting the tax appeal at issue.

(b) Any protesting taxpayer who would incur a total tax liability, not including penalties and interest, of less than \$1,000, by reason of the protested assessment or payment in question, may elect to employ the procedure established by this section upon:

- (1) Payment per taxpayer of a non-refundable filing fee set pursuant to rules adopted by the supreme court, which shall not exceed \$25; and
- (2) Filing with the tax appeal court a written statement of the facts in the case, together with a waiver of the right to further appeal.

The tax appeal court shall cause a notice of the appeal and a copy of the statement to be served on the director of taxation[-] and in the case of an appeal from a decision involving a county as a party, the real property assessment division of the county involved."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 27, 2011.)

ACT 168

H.B. NO. 1000

A Bill for an Act Relating to Enhanced 911 Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 138, Hawaii Revised Statutes, is amended to read as follows:

~~“[CHAPTER 138]~~
ENHANCED 911 SERVICES ~~[FOR MOBILE PHONES]~~’

~~“[§138-1]~~ **Definitions.** As used in this chapter, unless the context requires otherwise:

“911” means the digits, address, internet protocol address, or other information used to access or initiate a call to a public safety answering point.

“911 coordinator” means the person designated to carry out the responsibilities of coordinating 911 services as required in Section 3(b) of the Wireless Communications and Public Safety Act of 1999.

“911 service” or “universal emergency number service” means public communications service that provides service users with the ability to reach a public safety answering point by accessing a 911 system.

“911 system” means an emergency communications system that:

- (1) Enables the user of a voice communications service connection such as telephone, computer, or commercial mobile radio service, Interconnected Voice over Internet Protocol service or a data communications service connection that transmits data exclusively, such as text messaging, to reach a public safety answering point by accessing 911, or via a service/relay bureau or accessing a 911 system through some other means; and
- (2) Provides enhanced 911 service.

“Automatic location identification” means [a-wireless] an enhanced 911 service capability that enables the automatic display of information indicating the address or approximate geographic location of the [wireless telephone] communication device used to place a 911 call [in accordance with the Federal Communications Commission Order].

“Automatic number identification” means [a-wireless] an enhanced 911 service capability that enables the automatic display of the ten-digit [wireless] telephone number [used to place a 911 call in accordance with the Federal Communications Commission order.] or some other unique identifier of the device from which a 911 call is placed.

“Board” means the [wireless] enhanced 911 board established under this chapter.

“Call” means any communication, message, signal, or transmission.

“Commercial mobile radio service” means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, Title² 47 [U.S.C.] United States Code Section 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, [P.L.] Public Law 103-66, August 10, 1993, 107 Stat. 312.

“Commercial mobile radio service connection” means each active wireless telephone number assigned to a commercial mobile radio service customer, including end-users of resellers whose place of primary use is within the State.

[“Federal Communications Commission order” means the original order issued in the Federal Communications Commission Docket No. 94-102 gov-

erning wireless enhanced 911 service and any other Federal [Communications] Commission orders related to the provision of wireless enhanced 911 service.]

“Communications service” means a service capable of accessing, connecting with, or interfacing with a 911 system, by dialing, initializing, or otherwise activating the 911 system by means of a local telephone device, commercial mobile radio service device, Interconnected Voice over Internet Protocol device, indirect communication through a service bureau or call relay service, such as alarm companies, or any other means.

“Communications service connection” means each telephone number or a device’s unique identifier assigned to a residential or commercial subscriber by a communications service provider, without regard to technology deployed.

“Communications service provider” means an entity that provides communications service to a subscriber.

“Database service provider” means a service supplier who maintains and supplies or contracts to maintain and supply an automatic information location database or master street address guide.

“Enhanced 911 fund” or “fund” means the special fund established by section 138-3.

“Enhanced 911 service costs” means all capital, nonrecurring, and recurring costs directly related to the implementation, operation, and administration of enhanced 911 services.

“Interconnected Voice over Internet Protocol” means a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user’s location;
- (3) Requires internet protocol-compatible customer premises equipment; and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

“Interconnected Voice over Internet Protocol service provider” means an entity that provides Interconnected Voice over Internet Protocol service.

“Prepaid connection” means the sale of a communications service that is paid for in advance or sold in predetermined units of which the number of units declines with use of the services.

“Proprietary information” means customer lists and other related information (including the number of customers), technology descriptions, technical information, or trade secrets, and the actual or developmental costs of [wireless] enhanced 911 service that are developed, produced, or received internally by a [wireless] communications service provider or by a provider’s employees, directors, officers, or agents.

“Public safety agency” means a functional division of [the State or county] a governmental entity that provides or has authority to provide, or a private entity contracted by a [state or county agency] governmental entity that provides, firefighting, law enforcement, ambulance, medical, or other emergency services.

“Public safety answering point” means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to those calls.

“Reseller” means a person or entity that purchases [commercial mobile radio service] communications service from a [wireless] communications service provider for the purpose of reselling [commercial mobile radio service] communications service to end-users.

“Wireless enhanced 911 commercial mobile radio service costs” means all capital, nonrecurring, and recurring costs directly related to the implementa-

tion and operation of phase I or phase II wireless enhanced 911 services pursuant to the Federal Communications Commission order.

“Wireless enhanced 911 fund” or “fund” means the statewide special fund established to ensure adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service in Hawaii.

“Wireless provider” means a person or entity that is authorized by the Federal Communications Commission to provide facilities-based commercial mobile radio service within the State.

§138-2^[3] ~~Wireless enhanced~~ **Enhanced 911 board.** (a) There is created within the department of accounting and general services, for administrative purposes, ~~a wireless~~ an enhanced 911 board consisting of ~~eleven~~ thirteen voting members; provided that the membership shall consist of:

- (1) The comptroller or the comptroller’s designee;
- (2) Three representatives from wireless communications service providers, who shall be appointed by the governor as provided in section 26-34~~]; except as otherwise provided by law~~;
- (3) One representative each from the public safety answering points for Oahu, Hawaii, Kauai, Maui, and Molokai~~]; who shall be appointed by the governor~~]; and one representative, chosen by the mayor of the city and county of Honolulu, who shall be appointed by the governor as provided in section 26-34⁴~~]; except as otherwise provided by law, from a list of five names submitted by each respective public safety answering point~~;
- (4) The consumer advocate or the consumer advocate’s designee; ~~and~~
- (5) One representative from a communications service company that offers Interconnected Voice over Internet Protocol services, who shall be appointed by the governor as provided in section 26-34; and

~~[(5)]~~ (6) One representative of the ~~current wireline provider of enhanced 911~~ public utility providing telecommunications services and land line enhanced 911 services through section 269-16.95.

(b) ~~Six members~~ A simple majority shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board.

(c) The chairperson of the board shall be elected by the members of the board by simple majority and shall serve a term of one year.

(d) The board shall meet upon the call of the chairperson, but not less than quarterly.

(e) The members representing wireless providers, the public utility providing telecommunications services and land line enhanced 911 services through section 269-16.95, and Interconnected Voice over Internet Protocol service providers shall be appointed by the governor for terms of two years~~]; except that terms of the two members initially appointed shall be for eighteen months~~.

(f) Each member shall hold office until the member’s successor is appointed and qualified. Section 26-34 shall apply only insofar as it relates to succession, vacancies, and suspension of board members, and as provided in subsection (a).

(g) The board may adopt rules under chapter 91 as necessary to carry out the purposes of this chapter.

~~[(g)]~~ (h) The members shall serve without compensation. Members shall be entitled to reimbursements from the ~~wireless~~ enhanced 911 fund for reasonable traveling expenses incurred in connection with the performance of board duties.

~~[(h)]~~ (i) The board or its chairperson, with the approval of the board, may retain independent, third-party accounting firms, consultants, or other third party to:

- (1) Create reports, make payments into the fund, process checks, and make distributions from the fund, as directed by the board and as allowed by this chapter; and
- (2) Perform administrative duties necessary to administer the fund or oversee operations of the board, including providing technical advisory support[-]; provided that no third-party accounting firm, consultant, or other third party hired to perform these administrative duties may be retained if the accounting firm, consultant, or other third party, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any entity subject to the provisions of this chapter.

~~[(i)]~~ (j) The board shall develop reasonable procedures to ensure that all ~~[wireless providers]~~ members receive adequate notice of board meetings and information concerning board decisions.

~~[[§138-3]]³ Wireless enhanced~~ **Enhanced 911 fund.** There is established outside the state treasury a special fund, to be known as the ~~[wireless]~~ enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under section 138-4. The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State. Moneys in the fund shall be expended exclusively by the board for the purposes of ensuring adequate ~~[cost recovery for the deployment, of phase I and phase II wireless]~~ funding to deploy and sustain enhanced 911 service, developing and funding future enhanced 911 technologies, and [for] funding expenses of administering the fund. [Any funds that accumulate in the wireless enhanced 911 fund shall be retained in the fund unless determined by the legislature to be in excess.

~~[[§138-4]]~~ **Surcharge.** (a) A monthly ~~[wireless]~~ enhanced 911 surcharge, subject to this chapter, shall be imposed upon each ~~[commercial mobile radio]~~ communications service connection[-], except connections of the public utility providing telecommunications services and land line enhanced 911 services through section 269-16.95.

(b) ~~[The effective date of the surcharge shall be July 1, 2004.]~~ The rate of the surcharge shall be set at 66 cents per month for each ~~[commercial mobile radio]~~ communications service connection. The surcharge shall have uniform application and shall be imposed on each ~~[commercial mobile radio]~~ communications service connection operating within the State except:

- (1) Connections billed to federal, state, and county governmental⁵ entities; ~~[and]~~
- (2) Prepaid connections[-]; and
- (3) Connections provided by the public utility providing telecommunications services and land line enhanced 911 services through section 269-16.95.

(c) All ~~[wireless]~~ communications service providers and resellers shall bill to and collect from each of their customers a monthly surcharge at the rate established for each ~~[commercial mobile radio]~~ communications service connection. The ~~[wireless]~~ communications service provider or reseller may list the surcharge as a separate line item on each bill. If a ~~[wireless]~~ communications service provider or reseller receives a partial payment for a monthly bill from a ~~[commercial mobile radio]~~ communications service customer, the ~~[wireless]~~ communica-

tions service provider or reseller shall apply the payment against the amount the customer owes the [wireless] communications service provider or reseller, before applying the partial payment against the surcharge.

(d) A [wireless] communications service provider that:

- (1) Is collecting the surcharge and remitting appropriate portions of the surcharge to the fund pursuant to this chapter; and
- (2) Has been requested by a public safety answering point to provide [phase I or phase II wireless] enhanced 911 service in a particular county or counties,

may recover [wireless] enhanced 911 [commercial mobile radio] service costs as provided in this chapter.

(e) Each [wireless] communications service provider or reseller may retain two per cent of the amount of surcharges collected to offset administrative expenses associated with billing and collecting the surcharge.

(f) A [wireless] communications service provider or reseller shall remit to the [wireless] enhanced 911 fund, within sixty days after the end of the calendar month in which the surcharge is collected, an amount that represents the surcharges collected less amounts retained for administrative expenses incurred by the [wireless] communications service provider or reseller, as provided in subsection (e).

(g) A public utility providing telecommunications services and land line enhanced 911 services for its customer base and other service providers using the wire line provider's enhanced 911 service may collect and retain the surcharge at the established rate set forth in section 269-16.95.

~~(g)~~ (h) The surcharges collected by the [wireless] communications service provider or reseller pursuant to this section shall not be subject to any tax, fee, or assessment, nor are [they] the surcharges considered revenue of the provider or reseller.

~~(h)~~ (i) Each customer who is subject to this chapter shall be liable to the State for the surcharge until it has been paid to the [wireless] communications service provider. [Wireless] Communications service providers shall have no liability to remit surcharges that have not been paid by customers. A [wireless] communications service provider or reseller shall have no obligation to take any legal action to enforce the collection of the surcharge for which any customer is billed. However, the board may initiate a collection action against the customer. If the board prevails in such a collection action, reasonable attorney's fees and costs shall be awarded.

~~(i)~~ (j) At any time the members deem it necessary and appropriate, the board may meet to make recommendations to the legislature as to whether the surcharge and fund should be discontinued, continued as is, or amended.

~~(j)~~ (k) When considering whether to discontinue, continue as is, or amend the fund or surcharge, the board's recommendations shall be based on the latest available information concerning costs associated with providing [wireless] enhanced 911 service [in accordance with the Federal Communications Commission order].

[[§138-5]]—Recovery] Disbursements from the fund. (a) [After January 1, 2005, every] Every public safety answering point shall be eligible to seek [reimbursement] disbursements from the fund [solely] to pay for the reasonable costs to lease, purchase, or maintain all necessary equipment, including computer hardware, software, and database provisioning, required by the public safety answering point to provide technical functionality for the [wireless] enhanced 911 service [pursuant to the Federal Communications Commission order]. Reasonable costs may include expenses directly associated with the planning phases and

training of personnel in any new and emerging technologies involving enhanced 911. All other expenses necessary to operate the public safety answering point, including but not limited to those expenses related to overhead, staffing, and other day-to-day operational expenses, shall continue to be paid through the general funding of the respective counties.

(b) Every public safety answering point shall be eligible to seek disbursements from the fund to pay for the reasonable costs associated with having representatives, other than board members, on board committees, including established and investigative committees.

~~[(b) After January 1, 2005, each wireless]~~ (c) Each communications service provider may request reimbursement from the fund of [wireless] enhanced 911 [commercial mobile radio] service costs incurred; provided that the costs:

- (1) Are recoverable under section 138-4(d); and
- (2) Have not already been reimbursed to the [wireless] communications service provider from the fund.

In no event shall a [wireless] communications service provider be reimbursed for any amount above its actual [wireless] enhanced 911 [commercial mobile radio] communications service costs allowed to be recovered under section 138-4(d).

(d) Every communications service provider may seek disbursements from the fund to pay for the reasonable costs associated with having representatives, other than board members, on board committees, including established and investigative committees.

~~[(e)]~~ (e) After the expenses of the board are paid, the public safety answering points shall be allocated two-thirds of the remaining balance of the fund. The remaining one-third shall be available for [wireless] communications service provider cost recovery. The board shall determine the reimbursement amounts for the public safety answering points, based on the limitations set forth in section 138-5(a). The reimbursement level for each [wireless] communications service provider shall be limited:

- (1) To one-third of the total contribution made by the [wireless] individual communications service provider [to the wireless provider cost recovery portion of] into the fund; provided that this method of direct reimbursement shall not be available to the provider of wire line enhanced 911; and
- (2) As provided in [section 138-5(b)] subsection (c).

[[§138-6]] Report to the legislature. The board shall submit an annual report to the legislature, including:

- (1) The total aggregate surcharge collected by the State in the last fiscal year;
- (2) The amount of disbursement from the fund;
- (3) The recipient of each disbursement and a description of the project for which the money was disbursed;
- (4) The conditions, if any, placed by the board on disbursements from the fund;
- (5) The planned expenditures from the fund in the next fiscal year;
- (6) The amount of any unexpended funds carried forward for the next fiscal year;
- (7) A cost study to guide the legislature towards necessary adjustments to the fund and the monthly surcharge; and
- (8) A [progress] status report of jurisdictional [readiness] capabilities for [wireless E911] enhanced 911 services, including public safety answering points[, wireless providers,] and [wireline] communications service providers. [The report shall include the status of re-

quirements outlined in the Federal Communications Commission Order 94-102 and subsequent supporting orders related to phase I and phase II wireless 911 services.

[[§138-7 Audits.]] (a) During any period in which [a wireless] an enhanced 911 surcharge is imposed upon customers, the board may request an audited report prepared by an independent certified public accountant that demonstrates that the request for cost recovery from public safety answering points and [wireless] communications service providers recovers only costs and expenses directly related to the provision of [~~phase I or phase II wireless~~] enhanced 911 service as authorized by this chapter. The cost of the audited reports shall be considered expenses of the board. The board shall prevent public disclosure of proprietary information contained in the audited report, unless required by court order or appropriate administrative agency decision.

(b) The board shall select an independent third party to audit the fund every two years to determine whether the fund is being managed in accordance with this chapter. The board may use the audit to determine whether the amount of the surcharge assessed on each [~~commercial mobile radio~~] communications service connection is required to be adjusted. The costs of the audit shall be an administrative cost of the board recoverable from the fund.

[[§138-8]] Proprietary information. (a) All proprietary information submitted to the board by any third party used by the board in connection with its duties or any public safety answering point in deploying [wireless] enhanced 911 service shall be retained in confidence. Proprietary information submitted pursuant to this chapter shall not be released to any person, other than to the submitting [wireless] communications service provider or reseller, the board, or any independent, third-party accounting firm retained by the board, without the express permission of the submitting [wireless] communications service provider or reseller. General information collected by the board shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual [wireless] communications service provider.

(b) The board, any third parties it may retain, and any public safety answering point shall take appropriate measures to maintain the confidentiality of the proprietary information that may be submitted by a [wireless] communications service provider. The board shall hold all propriety information in confidence and shall adopt reasonable procedures to prevent disclosure or providing access to the proprietary information to the public and competitors, including members of the board representing other [wireless] communications service providers. Members of the board shall not disclose the information to any third parties, including their employers, without the written consent of the [wireless] communications service provider whose proprietary information is to be disclosed.

(c) A committee consisting of all board members, except the [~~three wireless~~] communications service provider representatives, shall have the power to act for the board on the specific matters defined by the board, when at least two-thirds of the members of the board determine that a board action may be conducted by the committee to prevent disclosure of proprietary information to the [wireless] communications service provider representatives.

[[§138-9]] Limitation of liability. (a) Notwithstanding any law to the contrary, in no event shall any [wireless] communications service provider, reseller, independent, third-party accounting firms, consultants, or other third

party retained by the State under section 138-2, or their respective employees, directors, officers, assigns, affiliates, or agents, except in cases of gross negligence or wanton and wilful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to a person or from damage to property incurred by any person in connection with any act or omission in developing, designing, adopting, establishing, installing, participating in, implementing, maintaining, or providing access to [phase I or phase II wireless] enhanced 911 or any other [wireless] communications service intended to help persons obtain emergency assistance. In addition, no [wireless] communications service provider, reseller, independent, third-party accounting firms, consultants, or other third party retained by the State under section 138-2, or their respective employees, directors, officers, assigns, affiliates, or agents shall be liable for civil damages or criminal liability in connection with the release of customer information to any governmental entity, including any public safety answering point, as required under this chapter.

(b) In no event shall any public safety answering point, or its employees, assigns, or agents, or emergency response personnel, except in cases of gross negligence or wanton and wilful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to the person or from damage to property incurred by any person in connection with any act or omission in the development, installation, maintenance, operation, or provision of [phase I or phase II wireless] enhanced 911 service.

[[§138-10]] Database or location information. (a) Any [~~commercial mobile radio~~] communications service location information obtained by any public safety answering point or public safety agency or its personnel for public safety purposes is not a government record open to disclosure under chapter 92F.

(b) A person shall not disclose or use, for any purpose other than the [~~wireless~~] enhanced 911 calling system, information contained in the database of the [~~wireless~~] communications service provider's network portion of the [~~wireless~~] enhanced 911 calling system established pursuant to this chapter, without the prior written consent of the [~~wireless~~] communications service provider.

[[§138-11]] Dispute resolution. (a) Any [~~wireless~~] communications service provider, reseller, independent, third-party accounting firms, consultants, or other third party retained by the State under section 138-2, or public safety answering point aggrieved by a decision of the board shall have the right to petition the board for reconsideration within ten days following the rendering of the board's decision. As part of its petition for reconsideration, the aggrieved party may present any reasonable evidence or information for the board to consider. The board shall render its decision on the reconsideration petition as soon as reasonably possible, but no later than thirty days after the reconsideration request is made.

(b) An aggrieved party, following the completion of the reconsideration petition process, upon agreement of the other party, may have the dispute resolved through final and binding arbitration by a single arbitrator in accordance with the [~~Wireless~~] Industry Arbitration Rules of the American Arbitration Association. The costs of the arbitration, including the fees and expenses of the arbitrator, shall be borne by the nonprevailing party of any arbitration proceeding. The arbitrator's decision shall be final and binding and may be confirmed and enforced in any court of competent jurisdiction.

(c) Nothing in this section shall preclude any [~~wireless~~] communications service provider, reseller, independent, third-party accounting firms, consultants, or other third party retained by the State under section 138-2, or public safety

answering point from pursuing any existing right or remedy to which it is entitled in any court having jurisdiction thereof.

[[§138-12]] Service contracts. A [wireless] communications service provider shall not be required to provide [wireless] enhanced 911 service until the [wireless] communications service provider and the public safety answering point providing [wireless] enhanced 911 service in the county or counties in which the [wireless] communications service provider is licensed to provide [commercial mobile radio] communications service have entered into a written agreement setting forth the basic terms of service to be provided.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 27, 2011.)

Notes

1. No close bracket.
2. Should be underscored.
3. So in original.
4. Prior to amendment “,” appeared here.
5. Prior to amendment “government” appeared here.

ACT 169

H.B. NO. 397

A Bill for an Act Relating to Lands Controlled by the State.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-50, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Legislative disapproval. Any exchange of public land for private land shall be subject to disapproval by the legislature by two thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session following the date of the board of land and natural resources’ approval in principle of the exchange. The state department or agency shall submit for introduction to the legislature a resolution for review of action on any exchange to be consummated by the board wherein exchange deeds will be executed by the parties together with the following information:

- (1) [the] The specific location and [area] size in square feet or in other precise measure of the parcels of land to be exchanged;
- (2) [the] The value of the lands to be conveyed by the State and the private party;
- (3) [the] The name or names of the appraiser or appraisers;
- (4) [the] The date of the appraisal valuation; [and]
- (5) [the] The purpose for which the lands are being exchanged[-];
- (6) A detailed summary of any development plans for the land to be exchanged; and
- (7) A statement of whether the land is, or is not, land that was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands, and a detailed explanation of how the state department or agency made this determination.

A copy of the draft resolution shall also be submitted to the office of Hawaiian affairs [~~when it is submitted to the legislature.~~] at least three months prior to the convening of a regular or special session of the legislature to allow the office to determine whether the land was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands."

SECTION 2. Section 171-64.7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The state department or agency proposing to sell or give any state land described in subsection (a) shall submit for introduction to the legislature a concurrent resolution for review of the proposed sale or gift. The concurrent resolution shall contain a list of all sales or gifts of state land proposed by the state department or agency. The concurrent resolution shall contain the following information:

- (1) The specific location and [area] size in square feet or in other precise measure of the parcels of land to be sold or given;
- (2) The appraisal value of the land to be sold or given;
- (3) The names of all appraisers performing appraisals of the land to be sold or given;
- (4) The date of the appraisal valuation;
- (5) The purpose for which the land is being sold or given; ~~and~~
- (6) A detailed summary of any development plans for the land to be sold or given[-]; and
- (7) A statement of whether the land is, or is not, land that was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands, and a detailed explanation of how the state department or agency made this determination.

A [~~copy~~] draft of the concurrent resolution for the prior approval of a sale or gift of land shall also be submitted to the office of Hawaiian affairs [~~when it is submitted to the legislature.~~] at least three months prior to the convening of a regular or special session of the legislature to allow the office to determine whether the land was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 27, 2011.)

A Bill for an Act Relating to the Criminal Justice System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. House Concurrent Resolution No. 27, H.D. 1 (2009), requested the office of Hawaiian affairs to contract for a study to examine the disparate representation and treatment of Native Hawaiians in Hawaii's criminal justice system. Pursuant to House Concurrent Resolution No. 27, H.D. 1, on September 28, 2010, the office of Hawaiian affairs released a study entitled, "The

Disparate Treatment of Native Hawaiians in the Criminal Justice System.” The study includes groundbreaking current research and analysis, using quantitative and qualitative methods, and includes the voices of Native Hawaiians about the criminal justice system and the effect it has on their lives.

The study shows that the disproportionate representation of Native Hawaiians in the criminal justice system accumulates at each stage. When controlled for age, gender, and severity of charge, Native Hawaiians are sentenced to more days in prison and receive a longer term of probation than most other racial or ethnic groups.

Collateral consequences of the disproportionate representation of Native Hawaiians in the criminal justice system, such as the inability to complete education, find employment, and obtain a driver’s license, further increase the likelihood of recidivism and place significant pressure on Native Hawaiian families. These collateral consequences push the limits of imposing a punishment to fit the crime and potentially deprive a person convicted of an offense of any chance to start afresh after incarceration.

A first step toward reducing the disproportionate representation of Native Hawaiians in the criminal justice system and collateral consequences would be to identify strategies for reducing unnecessary contact with the criminal justice system.

The purpose of this Act is to address the findings and recommendations of the office of Hawaiian affairs’ study by creating a task force to formulate policies and procedures to eliminate the disproportionate impact of the criminal justice system on all individuals, with particular focus on Native Hawaiians.

SECTION 2. (a) There is established a task force, to be attached administratively to the office of Hawaiian affairs, to formulate policies and procedures to eliminate the disproportionate representation of Native Hawaiians in Hawaii’s criminal justice system by looking for new strategies to reduce or avoid unnecessary involvement of these individuals with the criminal justice system.

(b) The task force shall recommend cost-effective mechanisms, legislation, and policies to reduce or prevent individuals’ unnecessary involvement with the criminal justice system. The recommendations shall include estimates of cultural and fiscal impact.

(c) The task force shall consist of nine members:

- (1) The attorney general, or the attorney general’s designee;
- (2) The director of public safety, or the director’s designee;
- (3) The chief executive officer of the office of Hawaiian affairs, or the chief executive officer’s designee;
- (4) The administrator of the adult client services branch of the first circuit court, or the administrator’s designee;
- (5) A circuit court judge to be selected by the chief justice of the Hawaii supreme court;
- (6) A criminologist to be selected by the governor from a list of no more than four names, two submitted by the senate president and two submitted by the speaker of the house of representatives;
- (7) A representative from the department of the prosecuting attorney of the city and county of Honolulu;
- (8) A representative from the office of the public defender; and
- (9) A member of the public selected by the governor from a list of no more than four names, two submitted by the senate president and two submitted by the speaker of the house of representatives.

(d) The members of the task force shall serve without compensation, but shall be reimbursed for expenses necessary in the performance of their duties.

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(e) The members of the task force shall select a chairperson from among its members.

(f) The task force shall submit to the legislature, no later than twenty days prior to the convening of the regular session of 2013, a final report of its activities, findings, and recommendations.

(g) The task force shall cease to exist on August 1, 2013.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 27, 2011.)

ACT 171

S.B. NO. 1491

A Bill for an Act Relating to District Courts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 604-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A summons or other writ issued by a district court may be served anywhere within the State. A summons or other writ issued by a district court may be served without the State in accordance with [sections] section 634-24 [and], 634-25[-], 634-34, 634-35, or 634-36.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 27, 2011.)

ACT 172

S.B. NO. 163

A Bill for an Act Relating to State Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in article VII, section 13 of the state constitution which states: “Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance”, the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in article VII, section 13 of the state constitution, which states in part: “General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of

the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance.” Article VII, section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including “reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year” and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under article VII, section 13.

- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2010-2011 and estimated for each fiscal year from 2011-2012 to 2014-2015, is as follows:

Fiscal Year	Net General <u>Fund Revenues</u>	<u>Debt Limit</u>
2007-2008	\$5,222,739,619	
2008-2009	5,034,984,956	
2009-2010	4,841,194,658	
2010-2011	4,842,386,000	\$ 931,100,019
2011-2012	5,288,757,000	907,644,880
2012-2013	5,586,164,000	923,294,156
2013-2014	5,892,854,000	969,233,932
2014-2015	(not applicable)	1,034,012,792

For fiscal years 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 2007-2008, 2008-2009, and 2009-2010 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2010, dated November 23, 2010. The net general fund revenues for fiscal years 2010-2011 to 2013-2014 are estimates, based on general fund revenue estimates made as of March 15, 2011 and April 8, 2011, by the council on revenues, the body assigned by article VII, section 7 of the state constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit.
 - (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by article VII, section 13 of the state constitution, for determining the power of the State to issue general obligation bonds within the debt

limit as of April 1, 2011, is as follows for fiscal year 2011-2012 to fiscal year 2017-2018:

Fiscal Year	Principal and Interest
2011-2012	\$507,066,146
2012-2013	579,212,955
2013-2014	578,018,611
2014-2015	610,254,531
2015-2016	563,610,553
2016-2017	576,315,435
2017-2018	504,933,484

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2018-2019 to fiscal year 2029-2030 when the final installment of \$45,711,073 shall be due and payable.

- (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$183,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the state constitution.
- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties.
 - (A) As calculated from the state comptroller's bond fund report as of February 28, 2011, adjusted for:
 - (i) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1¹ (the General Appropriations Act of 2011);
 - (ii) Lapses as provided in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1¹ (the General Appropriations Act of 2011);
 - (iii) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in House Bill No. 300, H.D. 2, S.D. 2, C.D. 1² (the Judiciary Appropriations Act of 2011); and
 - (iv) Lapses as provided in House Bill No. 300, H.D. 2, S.D. 2, C.D. 1² (the Judiciary Appropriations Act of 2011);
 the total amount of authorized but unissued general obligation bonds is \$1,394,633,973. The total amount of general obligation bonds authorized in this Act is \$1,476,137,000. The total amount of general obligation bonds previously authorized and unissued, as adjusted, and the general obligation bonds authorized in this Act is \$2,870,770,973.
 - (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$183,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the state constitution.
- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2011-2012, 2012-2013, 2013-2014, and 2014-2015 the

State proposed to issue \$375,000,000 in general obligation bonds during the first half of fiscal year 2011-2012, \$375,000,000 in general obligation bonds during the second half of fiscal year 2011-2012, \$375,000,000 in general obligation bonds during the first half of fiscal year 2012-2013, \$375,000,000 in general obligation bonds during the second half of fiscal year 2012-2013, \$350,000,000 in general obligation bonds during the first half of fiscal year 2013-2014, \$350,000,000 in general obligation bonds during the second half of fiscal year 2013-2014, \$350,000,000 in general obligation bonds during the first half of fiscal year 2014-2015, and \$325,000,000 in general obligation bonds during the second half of fiscal year 2014-2015. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fifth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.

- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds that the State proposes to issue during the fiscal years 2011-2012 to 2013-2014 is \$2,200,000,000. An additional \$675,000,000 is proposed to be issued in fiscal year 2014-2015. The total amount of \$2,200,000,000 which is proposed to be issued through fiscal year 2013-2014 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$2,870,770,973 reported in paragraph (4), except for \$670,770,973. It is assumed that the appropriations to which an additional \$670,770,973 in bond issuance needs to be applied will have been encumbered as of June 30, 2014. The \$675,000,000 which is proposed to be issued in fiscal year 2014-2015 will be sufficient to meet the requirements of the June 30, 2014, encumbrances in the amount of \$670,770,973. The amount of assumed encumbrances as of June 30, 2014, is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds proposed to be issued by June 30, 2014, and the amount of June 30, 2014, encumbrances versus the amount of bonds proposed to be issued in fiscal year 2014-2015, the legislature finds that in the aggregate, the amount of bonds proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.
- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds.
- (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:

- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
- (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 1.41 per cent for the ten years from fiscal year 2010-2011 to fiscal year 2019-2020. For the purpose of this declaration, the assumption is made that one per cent of each bond issue shall be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative.

- (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor may be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7); provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under article VII, section 13 of the state constitution for the fiscal years 2011-2012, 2012-2013, 2013-2014, and 2014-2015 are as follows:

<u>Fiscal year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution</u>
2010-2011	\$5,126,030,000
2011-2012	5,868,530,000
2012-2013	6,611,030,000
2013-2014	7,304,030,000
2014-2015	7,972,280,000

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or shall have been established as heretofore provided, may be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to article VII, section 13 of the state constitution shall

become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at a net average interest rate, after giving effect to federal subsidy payments, if any, received by the State under and pursuant to federal laws as may from time to time be in effect, not to exceed 5.25 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds, and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

Time of Issuance and Amount to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties
1st half FY 2011-2012 \$371,250,000	907,644,880	637,124,450 (2014-2015)
2nd half FY 2011-2012 \$371,250,000	907,644,880	656,615,075 (2014-2015)
1st half FY 2012-2013 \$371,250,000	923,294,156	682,509,330 (2016-2017)
2nd half FY 2012-2013 \$371,250,000	923,294,156	716,054,955 (2016-2017)
1st half FY 2013-2014 \$346,500,000	969,233,932	734,246,205 (2016-2017)
2nd half FY 2013-2014 \$346,500,000	969,233,932	752,437,455 (2016-2017)
1st half FY 2014-2015 \$346,500,000	1,034,012,792	770,628,705 (2016-2017)
2nd half FY 2014-2015 \$321,750,000	1,034,012,792	787,520,580 (2016-2017)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1¹ (the General Appropriations Act of 2011) and House Bill No. 300, H.D. 2, S.D. 2, C.D. 1² (the Judiciary Appropriations Act of 2011), passed by this regular session of 2011, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds so issued shall not exceed \$1,476,137,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 27, 2011.)

Notes

- 1. Act 164.
- 2. Act 61.

ACT 173

S.B. NO. 105

A Bill for an Act Relating to Uniform Real Property Transfer on Death.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

§ -1 **Short title.** This Act may be cited as the Uniform Real Property Transfer on Death Act.

§ -2 **Definitions.** As used in this chapter:

“Beneficiary” means a person that receives property under a transfer on death deed.

“Designated beneficiary” means a person designated in a transfer on death deed to receive property.

“Joint owner” means an individual who owns property concurrently with one or more individuals with a right of survivorship. The term includes a joint tenant and a tenant by the entirety but does not include a tenant in common.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Property” means an interest in real property located in this State that is transferable on the death of the owner.

“Subject property” means real property or an interest in real property that is subject to a transfer on death deed.

“Transfer on death deed” means a deed authorized under this chapter.

“Transferor” means an individual who executes a transfer on death deed.

§ -3 Applicability. This chapter applies to a transfer on death deed executed at any time by a transferor who dies on or after July 1, 2011.

§ -4 Nonexclusivity. This chapter does not affect any method of transferring property otherwise permitted under the laws of this State.

§ -5 Transfer on death deed authorized. An individual may transfer property, effective at the transferor’s death, to one or more beneficiaries by a transfer on death deed; provided that, with respect to property of which any portion is registered in the land court, transfer is subject to the requirement in section -13(a)(1) regarding submittal of a petition to the land court.

§ -6 Transfer on death deed revocable. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

§ -7 Transfer on death deed nontestamentary. A transfer on death deed is nontestamentary.

§ -8 Capacity of transferor. The capacity required to execute or revoke a transfer on death deed is the same as the capacity required to execute a will.

§ -9 Requirements. A transfer on death deed:

- (1) Except as otherwise provided in paragraph (2), shall contain the essential elements and formalities of a properly recordable inter vivos deed;
- (2) Shall state that the transfer to the beneficiary is to occur at the transferor’s death; and
- (3) Shall be recorded with the bureau of conveyances or filed in the office of the assistant registrar of the land court, as applicable, before the transferor’s death.

§ -10 Notice, delivery, acceptance, consideration not required. A transfer on death deed shall be effective without notice or delivery to or acceptance by the designated beneficiary during the transferor’s life, and without consideration.

§ -11 Revocation by instrument authorized; revocation by act not permitted. (a) Subject to subsection (b), an instrument is effective to revoke all or any part of a recorded or filed transfer on death deed only if the instrument is acknowledged by the transferor after the acknowledgement of the transfer on death deed being revoked and is recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court, as applicable, before the transferor’s death and is:

- (1) A subsequently recorded or filed transfer on death deed that revokes all or a part of the recorded or filed transfer on death deed either expressly or because of inconsistency;
 - (2) An instrument of revocation that expressly revokes all or a part of the recorded or filed transfer on death deed; or
 - (3) An inter vivos deed that expressly revokes all or a part of the transfer on death deed.
- (b) If a transfer on death deed is executed by more than one transferor:
- (1) Revocation by one transferor does not affect the deed as to the interest of another transferor; and
 - (2) A deed executed by joint owners is revoked only if it is revoked by all living joint owners.
- (c) After a transfer on death deed is recorded or filed, as applicable, it may not be revoked by a revocatory act on the deed. For purposes of this subsection, "revocatory act" includes burning, tearing, canceling, obliterating, or destroying the transfer on death deed or any part of it.
- (d) This section shall not limit the effect of an inter vivos transfer of the subject property.

§ -12 Effect of transfer on death deed during transferor's life. During a transferor's life, a transfer on death deed shall not:

- (1) Affect an interest or right in the subject property of the transferor or any other owner, including the right to transfer or encumber the subject property;
- (2) Affect an interest or right in the subject property of a transferee, regardless of whether the transferee has actual or constructive notice of the deed;
- (3) Affect an interest or right in the subject property of a secured or unsecured creditor or future creditor of the transferor regardless of whether the creditor has actual or constructive notice of the deed;
- (4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;
- (5) Create a legal or equitable interest in the subject property in favor of the designated beneficiary; or
- (6) Subject the subject property to claims or process of a creditor of the designated beneficiary.

§ -13 Effect of transfer on death deed at transferor's death. (a) Except as otherwise provided in the transfer on death deed, this section, or sections 560:2-202, 560:2-603, 560:2-702, 560:2-706, 560:2-707, 560:2-803, and 560:2-804, on the death of the transferor, the following shall apply to the subject property owned by the transferor at death:

- (1) Subject to paragraph (2), the interest in the subject property shall be transferred to the designated beneficiary in accordance with the deed; provided that, for property of which any portion is registered in the land court pursuant to chapter 501, a petition noting the death of the transferor and requesting that a new certificate of title be issued in the name of the designated beneficiary shall be filed and processed with the land court before the interest in the subject property is transferred;
- (2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor and the interest of a designated beneficiary that fails to survive the transferor shall lapse;

- (3) Subject to paragraph (4), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship; and
- (4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the subject property, any share that lapses or fails for any reason shall be transferred to the other beneficiaries in proportion to the interest of each in the remaining concurrently-held subject property.

(b) Pursuant to the filing requirements of chapter 501 or the recording provisions of 502, as applicable, a beneficiary shall take the subject property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the subject property is subject at the transferor's death. For purposes of this subsection and the filing provisions of chapter 501 or the recording provisions of chapter 502, the filing or recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner and is survived by one or more other joint owners, the subject property shall belong to the surviving joint owner or owners with the right of survivorship and the transfer on death deed shall have no effect. If a transferor is a joint owner and is the last surviving joint owner, the transfer on death deed shall be effective.

(d) A transfer on death deed transfers the subject property without covenant or warranty of title even if the transfer on death deed contains a contrary provision.

§ -14 Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as provided by chapter 526, the Uniform Disclaimer of Property Interests Act.

§ -15 Liability for creditor claims and statutory allowances. (a) To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against the subject property transferred at the transferor's death by a transfer on death deed.

(b) If more than one property is transferred by one or more transfer on death deeds, the liability under subsection (a) shall be apportioned among the subject properties in proportion to their respective net values at the time of the transferor's death.

(c) A proceeding to enforce liability under this section shall be commenced not later than eighteen months after the transferor's death.

§ -16 Uniformity of application and construction. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact similar uniform legislation.

§ -17 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, P.L. 106-229, Title 15 United States Code Chapter 96, but does not modify, limit, or supersede Title 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in Title 15 United States Code, Section 7003(b)."

SECTION 2. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

to: **“§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity;

- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership; ~~[and]~~
- (17) Any document or instrument conveying real property to any non-profit or for-profit organization that has been certified by the Hawaii housing finance and development corporation for low-income housing development~~[-]; and~~
- (18) Any document or instrument that conforms to the transfer on death deed as authorized under chapter .”

SECTION 3. Section 526-12, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) In the case of an interest created by a beneficiary designation made after ~~[the time]~~ the designation becomes irrevocable~~[-a]~~:

- (1) The disclaimer ~~[must]~~ of an interest in personal property shall be delivered to the person obligated to distribute the interest~~[-]; and~~
- (2) The disclaimer of an interest in real property shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court, as applicable.”

SECTION 4. Section 526-15, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§526-15]]~~ **Recording of disclaimer.** If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be ~~[se]~~ filed, recorded, or registered. ~~[Failure]~~ Except as otherwise provided in section 526-12(g), failure to file~~[-]; or record~~[-or register]~~~~ the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 27, 2011.)

ACT 174

S.B. NO. 219

A Bill for an Act Relating to Corrections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . PREGNANT OFFENDERS; RESTRAINTS

§533- Definitions. As used in this part:

“Labor” means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

“Postpartum recovery” means:

- (1) The entire period a female is in a hospital, birthing center, or clinic after giving birth; and
- (2) An additional time period, if any, a treating physician determines is necessary for healing after the female leaves the hospital, birthing center, or clinic.

“Restraints” means anything used to control the movement of a person’s body or limbs and includes:

- (1) Physical restraint; or
- (2) A mechanical device, including metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

“Transport” means the conveyance, by any means, of a committed person from the correctional facility to another location, including travel to and from a transport vehicle.

§353- Limitation on use of restraints. (a) While transporting, no restraints of any kind may be used on any committed female:

- (1) During the third trimester of her pregnancy;
- (2) During postpartum recovery; or
- (3) During any portion of her pregnancy, if her physician so orders;

except in extraordinary circumstances.

(b) While the pregnant female is in labor or in childbirth no restraints of any kind shall be used. Nothing in this section affects the use of hospital restraints requested for the medical safety of the patient by a treating physician.

(c) Any restraints used on a pregnant female shall be the least restrictive available and the most reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any pregnant female.

(d) No correctional personnel shall be present in the room during the pregnant female’s labor or childbirth, unless specifically requested by medical personnel. If the correctional personnel’s presence is requested by medical personnel, the correctional personnel shall be female, if practicable.

(e) If the doctor, nurse, or other health professional treating the pregnant female requests that restraints not be used, the corrections officer accompanying the pregnant female shall immediately remove all restraints.

(f) For the purpose of this section, “extraordinary circumstances” exist where a corrections officer makes an individualized determination that restraints are necessary to prevent an incarcerated pregnant female from escaping or injuring herself, medical or correctional personnel, or others.

If a corrections officer determines that extraordinary circumstances exist and restraints are used, the corrections officer shall fully document in writing the facts upon which a finding of extraordinary circumstances was based. The corrections officer shall also include the kind of restraints used and the reasons those restraints were considered the most reasonable and least restrictive available under the circumstances.

§353- Enforcement. (a) The director shall provide information relating to the requirements of this part to all medical and nonmedical staff and correctional personnel who are involved in the transportation or supervision of female offenders who are pregnant or in postpartum recovery and other staff as the director deems appropriate.

(b) The director shall provide notice of the requirements of this part to any female offender who is pregnant or in postpartum recovery at the time that the department assumes custody of the female offender. Additional notice shall be posted in conspicuous locations in any appropriate correctional facility, including the locations in which medical care is provided within the facility. Any treating physician, midwife, or nurse of a female offender who is pregnant or in postpartum recovery shall be informed of the requirements of this part.”

SECTION 2. This Act shall take effect upon its approval.

(Approved July 1, 2011.)

ACT 175

S.B. NO. 892

A Bill for an Act Relating to Service Animals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that certain references to service animals in state law are either obsolete or inconsistent with federal law. Accordingly, the purpose of this Act is to:

- (1) Conform section 142-5.5, Hawaii Revised Statutes, regarding quarantine, to the definition of “service dog” established in chapter 347, Hawaii Revised Statutes;
- (2) Clarify section 143-4, Hawaii Revised Statutes, regarding dog licensing, to appropriately conform provisions applicable to service dogs with the Americans with Disabilities Act, Public Law 101-336;
- (3) Conform section 347-13, Hawaii Revised Statutes, relating to public conveyances, to Titles II and III of the Americans with Disabilities Act, codified as Title 42 United States Code, Sections 12131 through 12165, and Sections 12181 through 12189, respectively;
- (4) Conform section 347-19, Hawaii Revised Statutes, regarding the rights and liability of blind or partially blind, to the definition of “service dog” established in chapter 347, Hawaii Revised Statutes;
- (5) Conform section 515-3, Hawaii Revised Statutes, regarding discriminatory practices in real estate transactions, to the federal Fair Housing Act, Public Law 100-430; and
- (6) Conform sections 711-1109.4 and 711-1009.5,¹ Hawaii Revised Statutes, regarding criminal offenses against service dogs, to the definition of “service dog” established in chapter 347, Hawaii Revised Statutes.

SECTION 2. Chapter 347, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§347- **Service dog, defined.** As used in this chapter, “service dog” means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, intellectual, or other mental disability. A companion or comfort animal is not a service dog unless it meets the requirements of this definition and it accompanies a person for the purpose of performing the work or tasks for which it has been trained.”

SECTION 3. Section 142-5.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§142-5.5] Guide, signal, or service]~~ **Service dogs.** Any person with a disability who uses the services of a [guide, signal, or] service dog, as defined in section [515-3,] 347-, shall be permitted to reside on site for the duration of quarantine, if housing is available.”

SECTION 4. Section 143-4, Hawaii Revised Statutes, is amended to read as follows:

“§143-4 Issuance of license and tags. Upon the receipt of the license fee, the director of finance shall issue to the person paying the fee a license stating the following:

- (1) The name and address of the person to whom the license is issued;
- (2) The year for which the license is paid;
- (3) The date of payment;
- (4) A description of the dog for which the license is issued; and
- (5) The number of the metal tag issued for the dog[; and
- (6) ~~Any dog approved by the director of finance pursuant to rules established by the director to be a guide, signal, or service dog shall be so designated on the license].~~

The director of finance shall at the same time issue and deliver to the person a metal tag ~~[of such]~~ in the form and design as the director of finance may designate with a serial number and the year for which it is issued plainly inscribed thereon~~[, which].~~ The tag shall be attached to a collar around the neck of the dog for which the license has been issued. The fee for the tag shall be set by each county council; provided that, until and unless provided by ordinance, the fee shall be 10 cents.

~~[The director of finance, pursuant to chapter 91, shall adopt rules for the licensing of guide, signal, and service dogs.]”~~

SECTION 5. Section¹ 347, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 347
BLIND ~~[AND]~~, VISUALLY HANDICAPPED, AND OTHER DISABLED
PERSONS”**

SECTION 6. Section 347-13, Hawaii Revised Statutes, is amended to read as follows:

“§347-13 ~~[Blind, partially blind, physically handicapped;]~~ Persons who are blind, visually handicapped, disabled; public places; public conveyances. (a) ~~[The blind, visually handicapped, and]~~ Persons who are blind, visually handicapped, or otherwise [physically] disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable ~~[alike]~~ to all persons.

(b) ~~Every person who is blind, deaf, [or] visually handicapped, or [physically handicapped person]~~ otherwise disabled shall have the right to be accom-

panied by a ~~[guide, signal, or]~~ service dog, especially trained for the purpose~~;~~ of assisting the person in any of the places listed in subsection (a) without being required to pay an extra charge for the ~~[guide, signal, or]~~ service dog; provided that the ~~[blind, deaf, or visually or physically handicapped]~~ person shall be liable for any damage done to the premises or facilities by ~~[such]~~ the service dog. No ~~[such]~~ service dog shall be considered dangerous merely because it is unmuzzled.

(c) Every ~~[physically handicapped]~~ disabled person shall have the right to use a life jacket or other flotation device in a public swimming pool; provided that:

- (1) The ~~[handicapped]~~ person suffers from a physical disability or condition ~~[which]~~ that requires the use of a life jacket or other flotation device; and
- (2) The ~~[handicapped]~~ person obtains a statement signed by a licensed physician or physician assistant attesting to the ~~[handicapped]~~ person's need to use a life jacket or other flotation device.

(d) The director of human services shall adopt rules pursuant to chapter 91 necessary for the purposes of this section."

SECTION 7. Section 347-19, Hawaii Revised Statutes, is amended to read as follows:

"[§347-19] Rights of blind; partially blind. A blind or visually handicapped person not carrying a cane or using a ~~[guide]~~ service dog in any of the places, accommodations or conveyances listed in section 347-13, shall have all of the rights and privileges conferred by law upon other persons, and the failure of a blind or visually handicapped person to carry a cane or to use a ~~[guide]~~ service dog in any such places, accommodations, or conveyances shall not constitute nor be evidence of negligence."

SECTION 8. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

"§515-3 Discriminatory practices. It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection ~~[therewith;]~~ with a real estate transaction;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- (6) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, ~~[or]~~ to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or

indirectly, an intent to make a limitation, specification, or discrimination with respect ~~[thereto;]~~ to a real estate transaction:

- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection ~~[therewith;]~~ with a real estate transaction;

- ~~(8) To refuse to engage in a real estate transaction with a person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog, or service animal; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:~~

~~“Blind” shall be as defined in section 235-1;~~

~~“Deaf” shall be as defined in section 235-1;~~

~~“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;~~

~~“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction; provided that as used in this paragraph, the “reasonableness” of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a “reasonable restriction” may require the owner of the service animal, guide dog, or signal dog to comply with one or more of the following:~~

- ~~(A) Observe applicable laws including leash laws and pick-up laws;~~
~~(B) Assume responsibility for damage caused by the dog; or~~
~~(C) Have the housing unit cleaned upon vacating by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.~~

~~The foregoing list is illustrative only, and neither exhaustive nor mandatory;~~

~~“Service animal” means any animal that is trained to provide those life activities limited by the disability of the person;~~

~~“Signal dog” means any dog that is trained to alert a deaf person to intruders or sounds;]~~

- ~~(9) (8) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection, the causative agent of acquired immunodeficiency syndrome;~~

- ~~(10) (9) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises[-A]; provided that a real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;~~

- ~~(11) (10) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use~~

and enjoy a housing accommodation; provided that if reasonable accommodations include the use of an animal, reasonable restrictions may be imposed:

- [(12)] (11) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
- (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
 - (B) With respect to housing accommodations with an accessible building entrance:
 - (i) The public use and common use portions of the housing accommodations are accessible to and usable by [~~dis-~~abled] persons[;] with disabilities;
 - (ii) Doors allow passage by persons in wheelchairs; and
 - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- [(13)] (12) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation."

SECTION 9. Section 711-1109.4, Hawaii Revised Statutes, is amended to read as follows:

“[§711-1109.4] Causing injury or death to a [guide dog, signal dog, or service animal.] service dog. (1) A person commits the offense of causing injury or death to a [guide dog, signal dog, or service animal] service dog if:

- (a) The person recklessly causes injury to or the death of any [guide dog, signal dog, or service animal.] service dog while the service dog is in the discharge of its duties; or
- (b) The person is the owner of a dog and recklessly permits that dog to attack a [guide dog, signal dog, or service animal] service dog while [that] the service dog is in the discharge of its duties, resulting in the injury or death of the [guide dog, signal dog, or service animal.] service dog.

(2) Any person who commits the offense of causing injury or death to a [guide dog, signal dog, or service animal] service dog shall be punished as follows:

- (a) For a first offense by a fine of not more than \$2,000, imprisonment of not more than thirty days, or both; and
- (b) For a second or subsequent offense by a fine of not more than \$5,000, imprisonment of not more than thirty days, or both.
- (3) Any person who is convicted of a violation of this section shall be ordered to make restitution to:

- (a) The person with a disability who has custody or ownership of the ~~[guide dog, signal dog, or service animal,]~~ service dog, for any veterinary bills and out-of-pocket costs incurred as a result of the injury to the service dog; and
- (b) The person or organization that incurs the cost of retraining or replacing the ~~[animal,]~~ service dog, for the cost of retraining or replacing the ~~[animal]~~ service dog if it is disabled or killed.
- (4) As used in this section, [~~“guide dog”, “signal dog”, and “service animal”~~] “service dog” shall have the same meaning as in section ~~[515-3(8)-]~~ 347-.”

SECTION 10. Section 711-1109.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§711-1109.5]~~ **Intentional interference with the use of a ~~[guide dog, signal dog, or service animal,]~~ service dog.** (1) A person commits the offense of intentional interference with the use of a ~~[guide dog, signal dog, or service animal]~~ service dog if the person, with no legal justification, intentionally or knowingly:

- (a) Harms a ~~[guide dog, signal dog, or service animal,]~~ service dog; or
- (b) Strikes or kicks a ~~[guide dog, signal dog, or service animal,]~~ service dog;

while the ~~[guide dog, signal dog, or service animal]~~ service dog is in the discharge of its duties.

(2) Intentional interference with the use of a ~~[guide dog, signal dog, or service animal]~~ service dog is a misdemeanor.

(3) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(4) As used in this section, [~~“guide dog”, “signal dog”, and “service animal”~~] “service dog” shall have the same meaning as in section ~~[515-3(8)-]~~ 347-.”

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 14. This Act shall take effect upon its approval.

(Approved July 1, 2011.)

Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 176

H.B. NO. 597

A Bill for an Act Relating to Health Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Healthcare Association of Hawaii has established a patient safety and quality committee whose mission is to improve the quality of health care delivered by the full range of provider organizations represented by Healthcare Association of Hawaii members. The committee, which includes representatives of hospitals, nursing homes, home care agencies, and hospices, would like to examine medical cases that apply to various types of provider organizations. However, to ensure full and free discussion, information about the cases must be protected from its potential use in medical malpractice lawsuits.

The importance of protecting peer review and quality assurance of health care is recognized in Hawaii by statute in section 624-25.5, Hawaii Revised Statutes, which provides that such proceedings and records shall not be subject to discovery. The intent of this Act is to encourage robust discussion that leads to changes in health care policies, procedures, or practices. The absence of these protections would limit discussion and therefore limit improvements in the quality of health care.

Until recently, this protection was restricted to committees created by individual health care facilities. However, Act 133, Session Laws of Hawaii 2010, extended protection to multidisciplinary quality assurance committees convened and conducted by the department of health to monitor, improve, and evaluate emergency and trauma systems.

The purpose of this Act is to establish that the proceedings and records of interdisciplinary quality assurance committees composed of members from various health care organizations have similar protections as those committees formed by hospitals, health maintenance organizations, and statewide trauma care systems.

SECTION 2. Section 624-25.5, Hawaii Revised Statutes, is amended by amending the definition of "quality assurance committee" to read as follows:

““Quality assurance committee” means ~~an~~:

- (1) An interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, long-term care facility, skilled nursing facility, assisted living facility, home care agency, hospice, health maintenance organization, preferred provider organization, preferred provider network providing medical, dental, or optometric care, or an authorized state agency whose function is to monitor and evaluate patient care[-]; to identify, study, and correct deficiencies in the health care delivery system [to reduce], with a goal of reducing the risk of harm to patients [and improve], improving patient safety, or otherwise [improve] improving the quality of care delivered to patients[-]; or
- (2) An interdisciplinary committee composed of representatives of organizations described in paragraph (1) that is established collectively by the boards of trustees or administrative staff of these organizations, and whose function is to monitor and evaluate patient care to identify, study, and correct deficiencies in the health care delivery system, with a goal of reducing the risk of harm to patients, improving patient safety, or otherwise improving the quality of care delivered to patients.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 1, 2011.)

ACT 177

H.B. NO. 889

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to ensure that Hawaii is consistent with the efforts of federal agencies to control health care-associated infections. This Act also ensures that the department of health has access to health care-associated infection data reported by Hawaii's health care providers to the federal government. In addition, this Act requires the legislature to be updated on federal and state efforts to report health care-associated infections.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Health care-associated infection reporting. (a) Each health care facility in the State that is certified by the Centers for Medicare and Medicaid Services shall report information about health care-associated infections to the Centers for Disease Control and Prevention's national healthcare safety network, as specified in the rules of the Centers for Medicare and Medicaid Services.

(b) Health care facilities subject to this section shall authorize the Centers for Disease Control and Prevention to allow the department to access health care-associated infection data reported by those health care facilities to the national healthcare safety network.

(c) The department may adopt rules pursuant to chapter 91 to require that health care-associated infections that are multidrug-resistant be reported to the department through the national healthcare safety network. The rules shall specify which health care facilities are required to report those health care-associated infections that are multidrug-resistant through the national healthcare safety network, as well as the patient populations that are to be targeted in the reports. The first year of reporting required under this subsection shall be a pilot test of the reporting system and shall not be reported or disclosed to the public.

(d) The department shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(e) The department may issue reports to the public regarding health care-associated infections in aggregate data form to protect individual patient identity. The reports may identify individual health care facilities. The reports shall use the methodology or any part of the methodology developed by the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services for national reporting of health care-associated infections.

(f) Health care-associated infection information held by the department as a result of reporting under this section is not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding; provided that health care-associated infection information otherwise available from other

sources is not immune from subpoena, discovery, or introduction into evidence through those sources solely because the information was reported as required by this section.

(g) Beginning on June 30, 2013, and no later than June 30 of each year, thereafter, the department shall prepare a public report, in accordance with this section, containing information pertaining to health care-associated infections in the State for the previous calendar year.

(h) For the purposes of this section:

“Department” means the department of health.

“Health care facility” means the same as in section 323D-2.”

SECTION 3. The department of health shall submit a report to the legislature providing an update on health care-associated infection reporting required under section 2 of this Act no later than twenty days prior to the convening of the regular session of 2012.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 1, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 178

S.B. NO. 1154

A Bill for an Act Relating to Historic Preservation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the concept of a wilderness area in the culturally and historically rich south Kona area on the island of Hawaii has been discussed for more than forty years. This area has significant archaeological sites that warrant protection and preservation. Act 59, Session Laws of Hawaii 2003, established the south Kona wilderness area and provided for the development of a comprehensive management plan for the area; however, Act 59 was subsequently repealed on December 31, 2007, pursuant to Act 215, Session Laws of Hawaii 2006.

The purpose of this Act is to establish a south Kona wilderness area on the island of Hawaii.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . SOUTH KONA WILDERNESS AREA

§6E-A **South Kona wilderness area; establishment.** There is established the south Kona wilderness area on the island of Hawaii in the area described in section 6E-B to be administered by the department of land and natural resources for the preservation of the visual, cultural, biological, and historical aspects of the lands covered in this part and to:

- (1) Preserve the extensive archaeological sites in the area, including ancient homesites, a holua slide, a heiau, and burial caves;
- (2) Preserve and protect native Hawaiian plants and animals currently in the area;
- (3) Provide for a wilderness area with minimal man-made structures;
- (4) Permit limited non-vehicular access for recreational purposes, such as fishing, swimming, and exploration; and
- (5) Prevent additional development in the area.

§6E-B Lands included. (a) Except as provided in subsection (b), the following lands shall be included in the south Kona wilderness area:

- (1) Honomalino: All lands from the shoreline to six thousand feet inland;
- (2) Okoe: All lands from the shoreline to six thousand feet inland. The Honomalino and Okoe sections include approximately one thousand four hundred fifty-eight acres;
- (3) Kaulanamauna: The Manuka natural area reserve boundary extended to the shoreline; and
- (4) Manuka: The Manuka natural area reserve boundary extended to the shoreline.

(b) Any parcel of land included in subsection (a) upon which there is a dwelling house as of July 1, 2011, together with any outbuildings forming a part of the residential complex, shall be excluded from the south Kona wilderness area.

(c) Land use district boundaries existing as of July 1, 2011, shall continue in full force and effect subject to amendment as provided in chapter 205, Hawaii Revised Statutes.

§6E-C Government-owned land; construction prohibited. No new homes or other structures shall be constructed on government-owned land within one thousand feet of the shoreline within the south Kona wilderness area, except as follows:

- (1) Structures built by the department for the purpose of managing the area; and
- (2) Repairs to existing structures pursuant to rules adopted by the department under chapter 91;

provided that no government-owned land within the south Kona wilderness area shall be subdivided; provided further that the State and the County of Hawaii shall not be permitted to consolidate and resubdivide lots within the area if this consolidation or subdivision would increase the number of buildable lots.”

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 1, 2011.)

ACT 179

S.B. NO. 921

A Bill for an Act Relating to Minors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Consent to no cost emergency shelter and related services. (a) A provider may provide no cost emergency shelter and related services to a consenting minor if the provider reasonably believes that:

- (1) The minor understands the significant benefits, responsibilities, risks, and limits of the shelter and services and can communicate an informed consent;
- (2) The minor understands the requirements and rules of the shelter and services; and
- (3) The shelter and services are necessary to ensure the minor’s safety and well-being;

and the provider has conducted an assessment and determined that the minor does not pose a danger to the minor’s self or to other persons at the same location. If the provider determines that admitting the minor poses a danger, the provider shall report the matter to an appropriate agency.

(b) A minor may consent to no cost emergency shelter and related services if the minor understands the benefits, responsibilities, risks, and limits of the shelter and services, and the minor agrees to adhere to the provider’s rules and cooperate and participate in those services recommended by the provider; provided that:

- (1) The provider has not, despite reasonable efforts, been able to contact the minor’s parent, legal guardian, or legal custodian;
- (2) The provider has made contact with the minor’s parent, legal guardian, or legal custodian, and the minor’s parent, legal guardian, or legal custodian has refused to give consent and, based on the information available to the provider, the provider reasonably believes that the minor would incur harm, or would be subject to threatened harm, if the minor returned immediately to the home of the parent, legal guardian, or legal custodian; or
- (3) The minor has refused to provide contact information for the minor’s parent, legal guardian, or legal custodian, and the provider reasonably believes that the minor would incur harm, or would be subject to threatened harm, if the minor returned immediately to the home of the parent, legal guardian, or legal custodian.

(c) Any consent given by a minor under this section shall, for the duration of the period of shelter and with respect to all services, including medical services, be valid and binding as if the minor had reached the age of majority.

(d) The consent given under this section shall not be subject to later disaffirmance by reason of the minor’s minority.

(e) Any provider who renders emergency shelter and related services to a minor pursuant to subsections (a) and (b) of this section and can demonstrate compliance with this section shall be immune from any civil or criminal liability based on the provider’s determination to provide the shelter and related services; provided that if a provider’s assessment and determination, or conduct in providing emergency shelter and related services, is the result of the provider’s gross

negligence or wilful or wanton acts or omissions, the provider may be held liable for the provider's gross negligence or wilful or wanton acts or omissions.

(f) A provider who renders emergency shelter and related services to a minor shall document in writing the efforts made to contact the minor's parent, legal guardian, or legal custodian.

(g) The provider shall report any suspected child abuse or neglect to the department or the police department in accordance with section 350-1.1.

(h) For purposes of this section:

"No cost emergency shelter and related services" means accommodation at no cost for a continuous period of no more than thirty days, unless extended for emergency purposes and in compliance with subsection (b), including beds, meals, individual showering facilities, transportation to and from the place of shelter, and any of the following services as deemed appropriate by the provider:

- (1) Assistance with reunification with the family, legal guardian, or legal custodian of the minor;
- (2) Referral to safe housing;
- (3) Individual, family, and group counseling;
- (4) Assistance in obtaining clothing;
- (5) Access to medical and dental care, and mental health counseling;
- (6) Education and employment services;
- (7) Recreational activities;
- (8) Case management, advocacy, and referral services;
- (9) Independent living skills training; and
- (10) Aftercare services, as those services are defined in Title 45 Code of Federal Regulations Section 1351.1.

"Minor" means a person less than eighteen years of age.

"Provider" means any child-placing organization, or child-caring institution authorized by the department under section 346-17 to receive or place minor children for care and maintenance and to provide related services, health care, or supplies to these minors."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved July 1, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 180

S.B. NO. 1073

A Bill for an Act Relating to Surcharge for Indigent Legal Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that in November 2007, the Access to Justice Hui released a report entitled: "Achieving Access to Justice for Hawai'i's People". Part of that report, "The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawai'i", noted that four out of five low- and moderate-income residents did not have their legal needs met,

and that legal service providers are only able to assist one in three who contact them for assistance.

The legislature also finds that to increase the delivery of legal services, more funding is necessary. Additional funds could be generated by increasing the surcharge for indigent legal services, as recommended by another component of the above report, "The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai'i by 2010".

The purpose of this Act is to implement the funding recommendation of the Access to Justice Hui by increasing the amount of the surcharges for indigent legal fees.

SECTION 2. Section 607-5.7, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§607-5.7~~ **Surcharge for indigent legal services.** (a) In addition to the costs and fees prescribed in section 607-5, any person in a civil action in the circuit court who is required to pay an initial filing fee shall pay an additional surcharge [of \$25] at the time of the person's initial filing [~~Initial filings for which this surcharge shall be assessed include:~~

- (1) ~~Complaints, petitions, interventions, applications for special proceedings, and answers containing one or more cross-claims or counter-claims; and~~
- (2) ~~Third party complaints, but shall not include post-judgment civil process.] as follows:~~

(1) Effective January 1, 2012, \$50; and

(2) Effective January 1, 2014, \$65.

(b) In addition to the costs and fees prescribed in section 607-4, any person [who files an action for summary possession in the district court] in a civil action in the district court who is required to pay an initial filing fee shall pay an additional surcharge [of \$10] at the time of the person's initial filing[-] as follows:

(1) Effective January 1, 2012, \$25; and

(2) Effective January 1, 2014, \$35.

(c) Any person in a civil action in the [~~supreme court~~] courts of appeal who is required to pay an initial filing fee also shall pay an additional surcharge [of \$25] at the time of the person's filing[-] as follows:

(1) Effective January 1, 2012, \$50; and

(2) Effective January 1, 2014, \$65.

(d) Initial filings for which surcharges in this section shall be assessed include:

(1) Complaints, petitions, interventions, applications for special proceedings, and answers containing one or more cross-claims or counter-claims; and

(2) Third-party complaints, but shall not include post-judgment civil process.

(e) No surcharge in this section shall be assessed against:

(1) Small claims cases;

(2) Petitions for temporary restraining orders;

(3) Petitions for protective orders;

(4) Any party who has received the court's permission to proceed in forma pauperis; or

(5) Any party proceeding on behalf of the county or State.

Surcharges subject to this section shall be limited to one payment per party.

~~[(e)]~~ (f) There is established a special fund to be known as the indigent legal assistance fund. The funds raised under subsections ~~[(a) and (b)]~~ (a), (b), (c), and (d) shall be transmitted to the administrative director of the courts and deposited in the indigent legal assistance fund.

~~[(d)]~~ (g) This fund shall be administered by the administrative director of the courts, or pursuant to contract with the administrative director of the courts. If the fund is administered pursuant to contract with the administrative director of the courts, the contractor shall be a nonprofit organization that has at least one year's experience in administering grants to providers of civil legal services for indigents. The fund administrator shall receive not more than five per cent of the total amount collected under this section each fiscal year as compensation for performing the duties under this section.

~~[(e)]~~ (h) The fund administrator shall annually accept applications for grants funded from the indigent legal assistance fund from organizations that provide civil legal assistance to indigent persons. Applications shall be received no later than April 15 for assistance in the following fiscal year. The fund administrator shall determine the specific information required of the applicant and, at a minimum, shall require applicants to provide information concerning:

- (1) Their governance, staffing, and total annual budget;
- (2) Other funding sources;
- (3) Geographic area of service;
- (4) The number of clients served in the previous fiscal year; and
- (5) The nature and scope of services provided.

~~[(f)]~~ (i) To be eligible for assistance from the indigent legal assistance fund, an applicant shall meet all of the following standards at the time of application:

- (1) Be either a nonprofit organization incorporated and operated exclusively in Hawaii and determined by the Internal Revenue Service to be exempt from federal income tax or a program operated exclusively in Hawaii by an accredited nonprofit law school~~[-which];~~ provided that the organization or program provides as its primary purpose and function civil legal services to indigent persons;
- (2) Have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) Have bylaws or policies that describe the manner in which business is conducted, and policies that relate to nepotism and management of potential conflict of interest situations;
- (4) Have at least one year's experience in providing civil legal services to indigents;
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments;
- (6) Agree not to charge client fees for services that are funded in any part by a grant from the indigent legal assistance fund, except that token payments for costs and expenses shall not be considered fees;
- (7) Agree to use any grant received under this section exclusively to provide civil legal services to indigent persons; and
- (8) Have in place sound financial management systems, a client grievance procedure, a method of ensuring the quality of service provided, and a policy that provides that no person may interfere with any attorneys funded in whole or in part by this section in carrying out their professional responsibilities to their clients, as established by the Hawaii rules of professional conduct.

(j) The administrative director of the courts, or the contractor administering the fund pursuant to contract with the administrative director of the

courts, shall review, on a biennial basis, the indigent legal assistance fund to determine whether it is meeting the civil legal needs of indigent persons and shall report its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of the legislature in each even-numbered year beginning with the regular session of 2014.

~~[(g)]~~ (k) Funds shall be distributed on a pro rata basis to organizations that meet the criteria in subsection ~~[(f)]~~, (i), based upon the portion of their total budget expended in the prior year for civil legal services to indigent persons as compared to the combined total expended in the prior year for legal services by all qualifying organizations applying for funding. An applicant that provides services other than civil legal services to indigent persons may establish its proportionate entitlement to funds based upon financial statements ~~[which]~~ that strictly segregate ~~[that]~~ the portion of the organization's expenditures in the prior year ~~[which]~~ that were devoted exclusively to the provision of civil legal services for indigents.

~~[(h)]~~ (l) As used in this section, unless the context otherwise requires:

“Civil legal services” means direct legal services provided by attorneys or by attorney-supervised staff to clients in civil matters, including pro bono, judicial, and administrative advocacy relating to the civil legal problems of indigents.

“Indigent person” means:

- (1) Any individual whose income is not greater than one hundred twenty-five per cent of the official poverty line established by the Secretary of Health and Human Services under the Community Services Block Grant Act, 42 U.S.C. ~~[section]~~ Section 9902;
- (2) Any individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act; or
- (3) Any organization or client group whose purpose is to further the interests of indigent persons and which is at least fifty per cent composed of persons who meet the requirements of paragraph (1) or (2).”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2012.

(Approved July 5, 2011.)

ACT 181

S.B. NO. 283

A Bill for an Act Relating to Sustainability.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. During the 2005 Special Session, the legislature adopted Act 8, Special Session Laws of Hawaii 2005 (Act 8), to create the Hawaii 2050 task force to review the Hawaii state plan and the State's planning process. The office of the auditor was required to prepare and submit to the legislature the Hawaii 2050 sustainability plan. In enacting Act 8, the legislature expressed its belief that government is responsible for resolving daily and immediate issues and public needs, while providing guidance to assure a sustainable future and outlook.

The creation of the Hawaii 2050 sustainability plan comes as the State faces a growing number of pressing issues, including the steady deterioration of public infrastructure, the lack of affordable housing, a continued reliance on a service-based economy, the vulnerability of Hawaii in a volatile global energy market, possible interruptions in travel and to critical food supplies, threats to fragile island ecosystems, ever-increasing numbers of residents, and an increasing number of visitors over the long term. These issues all raise questions about the long-term limits of growth in the State and highlight the need to begin planning and acting to assure Hawaii's future.

Clearly, a policy framework to establish sustainability as a state priority and ensure a coordinated and coherent approach to fulfilling the long-range vision for a sustainable Hawaii is needed. The mission of the Hawaii 2050 task force and the objectives of the Hawaii 2050 sustainability plan focus on the revitalization of the State's long-term planning process to better guide the future development of Hawaii. Addressing and solving issues critical to Hawaii's way of life and natural resources require coordinated community efforts to produce comprehensive, long-range planning policies and actions.

In 2008, the legislature adopted Act 225, Session Laws of Hawaii 2008 (Act 225), directing the University of Hawaii at Manoa college of social sciences public policy center to review the Hawaii 2050 sustainability plan and provide a definitive framework for policy makers including defined data, data sources, and benchmarks for each of the major goals.

The purpose of this Act is to establish sustainability as a state priority by implementing the recommendation of the social sciences public policy center to incorporate the Hawaii 2050 sustainability plan definitions, guiding principles, and goals, into chapter 226, Hawaii Revised Statutes.

SECTION 2. Chapter 226, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§226- Sustainability. Priority guidelines and principles to promote sustainability shall include:

- (1) Encouraging balanced economic, social, community, and environmental priorities;
- (2) Encouraging planning that respects and promotes living within the natural resources and limits of the State;
- (3) Promoting a diversified and dynamic economy;
- (4) Encouraging respect for the host culture;
- (5) Promoting decisions based on meeting the needs of the present without compromising the needs of future generations;
- (6) Considering the principles of the ahupuaa system; and
- (7) Emphasizing that everyone, including individuals, families, communities, businesses, and government, has the responsibility for achieving a sustainable Hawaii.”

SECTION 3. Section 226-2, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Ahupuaa” means a traditional native Hawaiian resource and behavioral management system that ensures respect for the air, land, water, and other scarce natural resources that make life sustainable from the mountains to the sea.

“Kanaka maoli” means native Hawaiians.

“Sustainability” means achieving the following:

- (1) Respect of the culture, character, beauty, and history of the State's island communities;
- (2) Striking a balance between economic, social, community, and environmental priorities; and
- (3) Meeting the needs of the present without compromising the ability of future generations to meet their own needs.”

SECTION 4. Section 226-102, Hawaii Revised Statutes, is amended to read as follows:

“§226-102 Overall direction. The State shall strive to improve the quality of life for Hawaii's present and future population through the pursuit of desirable courses of action in [~~five~~] six major areas of statewide concern which merit priority attention: economic development, population growth and land resource management, affordable housing, crime and criminal justice, [~~and~~] quality education[~~-~~], and principles of sustainability.”

SECTION 5. The university of Hawaii public policy center, in consultation with the office of planning, shall submit a status and progress report to the legislature no later than December 21, 2011, that identifies the progress made in implementing the sustainability guidelines and principles set forth in this Act and any recommendations for legislation or other actions to facilitate the full implementation of the sustainability guidelines and principles set forth in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved July 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 182

S.B. NO. 285

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to improve access to the full range of health care services to medicaid and QUEST members accessing services through a mobile medical van by ensuring that medicaid and QUEST health plans have the flexibility to provide appropriate health services via technological means such as telehealth. This flexibility is especially important because a new mobile medical van will begin providing services to the more remote areas of Hawaii. Allowing QUEST and medicaid members to access services through the mobile medical van will assist in improving the health of those with chronic conditions as well as improving the overall health of area residents.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Telehealth services; medicaid and QUEST. (a) The department shall implement a mobile medical van telehealth pilot program. The mobile medical van shall be staffed by a primary care provider, including but not lim-

ited to an advanced practice registered nurse, and shall be equipped with telehealth capabilities to consult with other health care providers, as determined to be medically necessary.

(b) This section shall not require the department to cover patient self-referrals to providers outside of the mobile medical van program.

(c) This section shall not require the department to cover any new service.

(d) This section shall apply only to a mobile medical van program operating in a county with a population of less than two hundred fifty thousand and shall include a program operated by Kona community hospital through a partnership with a non-profit mutual benefit society operating in the State that provides health care coverage to at least six hundred thousand members.

(e) For the purposes of this section, "telehealth" means the use of a telecommunications service, as defined in section 269-1, including real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purpose of delivering enhanced health care services and information to parties separated by distance. A standard telephone contact, facsimile transmission, or an electronic message, in combination or by itself, does not constitute a telehealth service for the purposes of this section."

SECTION 3. (a) At least six months but no later than twelve months after the mobile medical van telehealth pilot program begins operations, the department of human services shall assess the implementation of the pilot program pursuant to section 2 of this Act.

(b) The assessment shall consider the following information regarding telehealth utilization and outcomes:

- (1) Day and time of day of utilization;
- (2) Provider types consulted;
- (3) Whether a patient had an established relationship with a provider, including whether the provider was the patient's primary care provider;
- (4) Summary of provider diagnoses;
- (5) All services ordered by the provider in response to the encounter (e.g., number of prescriptions and specific medications prescribed);
- (6) Mode of online care conversation (e.g. Internet, including video conferencing and web chat, or IVR phone);
- (7) Demographic of the patient who used the online care; and
- (8) Patient and provider satisfaction of the online care system and patient satisfaction rating of the provider.

(c) The department shall determine whether to continue, expand, or end the mobile medical van telehealth pilot program based on the results of the department's assessment.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval; provided that this Act shall be repealed on June 30, 2013.

(Approved July 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 183

S.B. NO. 1342

A Bill for an Act Relating to Parking for the Disabled.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291-54, Hawaii Revised Statutes, is amended to read as follows:

“§291-54 Display of removable and temporary removable windshield placards. The placard shall be displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle [~~utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror,~~] when the placard is in use. If the design of the rearview mirror precludes hanging the placard in a secure manner, the placard shall be displayed on the dashboard.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 5, 2011.)

ACT 184

S.B. NO. 1153

A Bill for an Act Relating to Agricultural Loans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that for the State to meet its sustainability goals, it must become more self-reliant in food production. To achieve this goal, new farms will have to be developed. However, one of the limiting factors is the availability of affordable credit for persons wanting to start new farm operations.

The legislature also finds that due to an increased interest in diversified agriculture, the number of farms in the State has been increasing. The state agricultural loan program has an existing new farmer program, but demand for the program's new farmer loans has been limited due to the program's high interest rate of six per cent and relatively low loan limit of \$100,000. In addition, the program has to share its funding with the qualified farmer programs.

The purpose of this Act is to provide affordable capital for new farmers by:

- (1) Reducing the new farmer program loan interest rate;
- (2) Increasing the program's loan limits; and
- (3) Reducing the number of credit denials required to qualify for the program.

SECTION 2. Section 155-1, Hawaii Revised Statutes, is amended by amending the definition of “new farmer program” to read as follows:

““New farmer program” means a new farm enterprise for qualified new farmers, [~~including persons who are:~~] who by reason of ability, experience, and training are likely to successfully operate a farm and who otherwise meet the eligibility requirements of section 155-10 and includes any of the following:

- (1) ~~[Displaced]~~ Persons displaced from employment in an agricultural production enterprise;
- (2) College graduates in agriculture;
- (3) Community college graduates in agriculture;
- (4) Members of the Hawaii Young Farmer Association and ~~[Future Farmer of America]~~ National FFA Organization graduates with farming projects;
- (5) Persons who have not less than two years' experience as part-time farmers;
- (6) Persons who have been farm tenants or farm laborers; or
- (7) Other individuals who for the two years last preceding their application have obtained the major portion of their income from farming operations; and
- (8) ~~Persons who by reason of ability, experience, and training as vocational trainees are likely to successfully operate a farm, who otherwise meet the eligibility requirements of section 155-10]."~~

SECTION 3. Section 155-3, Hawaii Revised Statutes, is amended to read as follows:

~~"§155-3 Restriction. Loans provided for by this chapter shall [be authorized only if these loans cannot be made by two lenders, which may include any of the following:] require two credit denials, except for class "F" loans for new farmer programs which shall require one credit denial. This requirement may be waived by the board of agriculture for emergency loans. Credit denials may be accepted from any of the following:~~

- (1) Private lenders;
- (2) Members of the farm credit system; or
- (3) The United States Department of Agriculture; ~~provided that the board of agriculture may waive this requirement for emergency loans]."~~

SECTION 4. Section 155-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~(c) Loans made under this section shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed to the borrower. The interest rate on loans of class "A", "B", "C", "E", and "G" shall be at a rate of one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is less. For purposes of this subsection, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the prime rate charged by the two largest banks in the State identified by the department of commerce and consumer affairs. If the prime rates of the two largest banks are different, the lower prime rate of the two shall apply. The interest rate on class "F" loans shall be at a rate of one and one-half per cent below the prime rate or at a rate of six per cent a year[-], whichever is less. The interest rate of class "H" loans shall be three per cent a year. If the money loaned is borrowed by the department, then the interest on loans of the classes shall be the rate as determined above or one per cent over the cost to the State of borrowing the money, whichever is greater. Interest on [class "D"] loans made under this chapter shall not be less than three per cent a year."~~

SECTION 5. Section 155-9, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Class F: Loans for new farmer programs shall provide for costs of a new farm enterprise for qualified new farmers:

- (1) Initial loans made under this class shall be for purposes and in accordance with the terms specified in class “A” and “C” only, and shall be made only for full-time farming. The loans shall be made for an amount not to exceed [~~\$100,000~~] \$250,000 or eighty-five per cent of the cost of the project, whichever is less;
- (2) Any subsequent loan shall be made from classes “A” to “D”, respectively, depending upon the purpose for which the loan funds are used; and
- (3) Borrowers shall comply with special term loan agreements as may be required by the department and shall take special training courses as the department deems necessary.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved July 5, 2011.)

ACT 185

S.B. NO. 281

A Bill for an Act Relating to Animal Industry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 142, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§142- Animal industry special fund.** There is established the animal industry special fund to be administered by the board of agriculture. Moneys received by the board of agriculture from:

- (1) The use or rental of the division of animal industry’s properties or facilities, including the animal quarantine property or facilities pursuant to section 142-3.5; or
- (2) Appropriations or other moneys made available,

shall be deposited into the special fund. All interest earned or accrued on moneys deposited in the special fund shall become part of the special fund. Moneys in the special fund shall be expended to cover costs of the division of animal industry, including the costs of salaries, fringe benefits, operating expenses, equipment, motor vehicles, contract with any qualified person or entity for livestock handling services, and operating and maintenance of the animal industry facilities; provided that moneys in the special fund may be used to fund the department’s resource management and planning programs. A reserve shall be maintained in the special fund to cover contingency costs, including accrued vacation leave, unemployment insurance, and workers’ compensation.”

SECTION 2. Section 142-3.5, Hawaii Revised Statutes, is amended to read as follows:

“**§142-3.5 Authority to contract or rent facilities.** The board of agriculture may contract with third parties for the use or rental of [~~animal quarantine~~] the division of animal industry’s property or facilities; provided that:

- (1) The board determines the property or facilities are not required for use by the [~~animal quarantine program~~] division of animal industry during the term of use by the third party;

- (2) The property or facilities shall be leased or rented at a reasonable lease rent as determined by the board of agriculture;
- (3) The property or facilities shall be used for animal welfare, including emergency shelters for animals, or ~~[agriculture-related]~~ other commercial purposes; and
- (4) The property or facilities shall be used only by the third party.

Revenues generated by the use or rental of the division of animal industry's property or facilities, including the animal quarantine property or facilities, shall be [used] deposited into the animal industry special fund, established pursuant to section 142- , and used to defray the operational costs of the ~~[animal quarantine program and to minimize animal quarantine fees.]~~ department of agriculture's division of animal industry."

SECTION 3. Section 142-28.5, Hawaii Revised Statutes, is amended to read as follows:

"§142-28.5 Animal quarantine special fund. There is established the animal quarantine special fund to be administered by the board of agriculture. ~~[All moneys]~~ Moneys received by the board of agriculture from:

- (1) Fees for the quarantine of cats, dogs, and other carnivores pursuant to this chapter;
- (2) Moneys received for the use of animal quarantine property or facilities pursuant to section 142-3.5; or
- (3) State appropriations or other moneys made available,

shall be deposited into the special fund. All interest earned or accrued on moneys deposited in the special fund shall become part of the special fund. Moneys in the special fund shall be expended to cover all costs of quarantine but not limited to the costs of salaries, fringe benefits, operating expenses, including the defraying of quarantine fees, equipment, motor vehicles, contract with any qualified person or entity for animal care services, operation and maintenance of the quarantine station, and promotional expenses. A reserve shall be appropriated and maintained in the special fund to cover contingency costs, including but not limited to accrued vacation leave, unemployment insurance, and workers' compensation."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved July 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 186

S.B. NO. 1277

A Bill for an Act Relating to Consumer Protection.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Chapter 488, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§488- Access to records. (a) Every plan and its owners, operators, officers, employees, and representatives shall:

- (1) Be subject to investigation or examination by the commissioner;
- (2) Produce and make freely accessible to the commissioner all accounts, records, documents, and files in the person's possession or control relating to the subject of the investigation or examination; and
- (3) Cooperate with any investigation or examination by the commissioner.

(b) If the commissioner finds the accounts or records of a plan, or of its owners, operators, officers, employees, or representatives, to be inadequate, improperly kept, or improperly posted, and if the plan has failed to correct the accounts or records after the commissioner has given the plan written notice and a reasonable opportunity to do so, the commissioner may employ experts to re-write, post, or balance the accounts at the expense of the plan being examined.

(c) A plan administrator shall provide a written response within seven days to any written inquiry made by the commissioner. The response shall be more than an acknowledgement that the commissioner's communication was received and shall adequately address the concerns stated in the communication.

§488- Records and reports. (a) The commissioner shall preserve in permanent form records and reports of the commissioner's proceedings, hearings, investigations, and examinations and shall file the records in the commissioner's office.

(b) The commissioner's records and filings in the commissioner's office shall be open to public inspection, except as otherwise provided in this chapter.

(c) The commissioner shall maintain the confidentiality of any documents or information received from the National Association of Insurance Commissioners, the federal government, insurance regulatory agencies of foreign countries, or insurance departments of other states, territories, and commonwealths that are confidential in the jurisdiction of origin. Documents and records subject to this subsection shall be confidential and privileged, shall not be made public, shall not be subject to subpoena or discovery, and shall not be admissible as evidence in any private civil action, and neither the commissioner nor any other person who received documents, materials, or other information subject to this subsection while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection.

This subsection shall not be construed to limit the commissioner's authority to use any necessary documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner may share information, including otherwise confidential information, with the National Association of Insurance Commissioners, the federal government, insurance regulatory agencies of foreign countries, or insurance departments of other states, territories, and commonwealths if the statutes or regulations of the jurisdiction receiving the information require the receiving person or entity to maintain the same level of confidentiality as required under this subsection and other applicable law.

(d) The commissioner shall not disclose any information that is protected from disclosure by law other than as provided in subsection (c).”

SECTION 2. Chapter 488, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“~~[[~~CHAPTER 488~~]]~~
PREPAID] LEGAL [SERVICES] SERVICE PLANS”**

SECTION 3. Section 488-1, Hawaii Revised Statutes, is amended as follows:

1. By adding one new definition to read:

“Legal service plan” or “plan” means any arrangement by which a person as defined in section 431:1-212, or entity, not otherwise authorized to engage in the practice of law, offers to provide or arranges for the provision of legal services in exchange for any valuable consideration that is paid to the plan.”

2. By amending the definition of “commissioner” to read:

“Commissioner” means the insurance commissioner[-] of the department of commerce and consumer affairs.”

3. By deleting the definitions of “department”, “group legal service plan”, and “prepaid legal service plan”.

~~[“Department” means the department of commerce and consumer affairs.~~

~~“Group legal service plan” is a plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest.~~

~~“Prepaid legal service plan” or “plan” means a group legal service plan in which the cost of the services are prepaid by the group member or by some other person or organization in the member’s behalf.”]~~

SECTION 4. Section 488-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall apply to all plans in the State other than:

- (1) Plans in which any party to the plan is the federal government or any agency thereof; or
- (2) Any employer-employee plan that is subject to the federal Employee Retirement Income Security Act of 1974, Public Law 93-406.

Plans that are owned and operated by an insurer subject to chapter 431 shall be exempt from the requirements of this chapter; provided that the insurer shall comply with the provisions of chapter 431 and file a statement certifying compliance with chapter 431.”

SECTION 5. Section 488-3, Hawaii Revised Statutes, is amended to read as follows:

“§488-3 [Filing and other requirements.] Certificate of authority; authority issued or denied; plan termination. (a) ~~[Sixty days prior to implementation of any plan and the accumulation or payment of money thereunder, all plan documents shall be submitted in writing for approval by the commissioner.]~~ Before conducting business in this State, a plan shall submit for approval with the commissioner an application for a certificate of authority, shall file documentation with the commissioner, and shall pay to the commissioner a fee as provided under section 431:7-101.

(b) The documentation required by subsection (a) shall contain in writing the following:

- (1) A brief statement of the plan’s financial structure, including a statement of the amount of prepayment, other charges or dues to be paid by plan members, and the manner in which the amounts are to be paid;
- (2) A statement of the amount of benefits, legal services, or reimbursement for legal services to be furnished each member of a plan, and

- the period during which [it] they will be furnished; and, if there are exceptions, reductions, exclusions, limitations, or restrictions of benefits, legal services, or reimbursements, a detailed statement of the exceptions, reductions, exclusions, limitations, or restrictions;
- (3) A statement of the terms and conditions upon which the plan may be canceled or otherwise terminated by the group, the plan administrator, the persons furnishing legal services, or the member; provided that for any cancellation or termination[;] other than by a member, there shall be provision made for the disposition of funds accumulated under the plan;
 - (4) A statement describing the applicability or nonapplicability of the benefits of the plan to the family dependents of the member;
 - (5) A statement of the period of grace [which] that will be allowed the member or the member's group for making any payment due under the plan;
 - (6) A statement describing a procedure for settling disputes between or among the group, the plan administrator, the persons furnishing legal services, and the member; [and]
 - (7) A statement that the plan includes the endorsements thereon and attached papers, if any, and contains the entire contract or contracts to be used among all parties to a plan[-], including the executed written agreement between the plan and any person providing legal services to the plan; and
 - (8) A listing of the owners, operators, officers, and plan administrator of the plan, including the current business address, home address, mailing address, business phone number, business fax number, business electronic mail address, business website address, and home phone number.

Any amendments or changes to the documents filed under paragraphs (1) to [(7)] (8) shall be filed with the commissioner for approval at least sixty days before they take effect. All documents filed under this section shall be public documents.

(c) If the commissioner finds that a plan has met the requirements of this section, the commissioner shall issue to it a proper certificate of authority.

(d) If the commissioner finds that a plan has not met the requirements of this section, the commissioner shall deny the plan a certificate of authority within a reasonable length of time following filing of the application by the plan.

(e) If the plan is canceled or otherwise terminated by the group, the plan administrator, or the persons furnishing legal services, the plan shall notify the commissioner in writing at least sixty days prior to the termination of the plan of the fact of plan termination and the provisions made for the disposition of funds accumulated under the plan."

SECTION 6. Section 488-4, Hawaii Revised Statutes, is amended to read as follows:

"§488-4 Accumulated funds, protection, violation. [(a) Any plan that accumulates funds from payments of premiums prior to paying those funds to persons providing legal services shall meet the requirements of this section.

~~(b)] (a) The plan administrator shall have the responsibilities of a trustee for all funds received, accumulated, or collected under this chapter.~~

~~[(e)] (b) The plan administrator, upon receipt of [premium] funds intended for payment to a person providing legal services pursuant to this chapter, shall maintain the funds at all times in a federally insured account with a~~

bank, savings and loan association, or financial services loan company located in Hawaii, separate from the plan's own funds or funds held by the plan administrator in any other capacity, in an amount at least equal to the funds collected and unpaid to the persons providing legal services, unless otherwise approved by the commissioner. Only additional funds that are reasonably necessary to pay bank, savings and loan association, or financial services loan company charges may be commingled with ~~[premium]~~ the funds accumulated pursuant to this section. If the bank, savings and loan association, or financial services loan company account is an interest earning account, the plan shall not retain the interest earned on accumulated funds for the plan or plan administrator's own use or benefit without the prior written consent of the person entitled to the funds. A plan trustee account shall be designated on the records of the bank, savings and loan association, or financial services loan company as a "trustee account established pursuant to section 488-4, Hawaii Revised Statutes", or words of similar import.

~~[(d)] (c)~~ The plan administrator shall obtain a \$100,000 bond ~~[in an amount and form approved by the commissioner]~~, which shall be executed by the plan administrator and a surety company authorized to do business in the State as a surety. ~~[The bond shall be to the benefit of the members of the plan and shall be filed with the commissioner.]~~

The bond shall run to the State for the benefit of any claimants against the plan to secure the faithful performance of the obligations of the plan. The aggregate liability of the surety shall not exceed the principal sum of the bond. The plan administrator shall provide the commissioner with proof of the bond at the time of the initial request for approval and at any time thereafter as requested by the commissioner. The plan shall not release the bond without the commissioner's approval. In lieu of the bond required by this section, the commissioner may accept letters of credit, certificates of deposits, or other ~~[evidences]~~ evidence of security in form and amounts deemed appropriate by the commissioner.

~~[(e)] (d)~~ Any person, including a plan administrator, owner, operator, officer, employee, or representative who, not being lawfully entitled to do so, diverts or appropriates funds accumulated pursuant to this section or any portion [thereof to the plan or plan administrator's] of accumulated funds for the person's own use, shall be subject to penalties as provided by law."

SECTION 7. Section 488-7, Hawaii Revised Statutes, is amended to read as follows:

"§488-7 Failure to comply; penalty. (a) Any plan that ~~[neglects or refuses to]~~ does not comply with this chapter shall be notified in writing by the commissioner of the ~~[neglect or refusal]~~ noncompliance and of the need to take corrective action within seven days. If the ~~[neglect or refusal]~~ noncompliance continues for seven days after notification, the plan~~[, group,]~~ or plan administrator may be fined not more than \$1,000~~[. Every day's neglect or refusal after the expiration of seven days shall be a separate offense.]~~ per day for each day of noncompliance.

(b) ~~[The]~~ In addition to penalties provided in subsection (a), the commissioner may deny, suspend, revoke, or refuse to approve the certificate of authority of any plan or any plan amendments [and may levy civil penalties as allowed by chapters 431, 432, 480, 481A, 481B, and 481C, and any applicable law for any violation of this chapter].

(c) If the commissioner takes any action pursuant to subsection (b), the commissioner shall notify the applicant or licensee in writing of the reason for that action. The applicant or licensee may submit a written request within ten days of the date of receipt of the notice for a hearing before the commissioner to

determine the propriety of the commissioner's action. A hearing pursuant to this subsection shall be held within thirty days of receipt of the written request, unless postponed by mutual consent, and shall be conducted pursuant to chapter 91.

(d) If the commissioner has cause to believe that any plan is violating or is about to violate any provision of this chapter or any order of the commissioner, the commissioner may issue a cease and desist order to enforce compliance with this chapter or any order of the commissioner, or may bring an action in any court of competent jurisdiction to enjoin the plan from continuing the violation. The commissioner may order or petition the court to order restitution on behalf of persons aggrieved by a violation of this chapter and an assessment of a monetary penalty against any plan, plan administrator, or owner, operator, or officer of the plan for violation of this chapter or an order of the commissioner."

PART II

SECTION 8. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner shall collect in advance the following fees:

- (1) Certificate of authority: Issuance..... \$1,800
- (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing \$3,000
 - (B) Issuance of solicitation permit..... \$300
- (3) Producer's license:
 - (A) Issuance, regular license..... \$100
 - (B) Issuance , temporary license \$100
- (4) Nonresident producer's license: Issuance \$150
- (5) Independent adjuster's license: Issuance \$150
- (6) Public adjuster's license: Issuance \$150
- (7) [~~Workers' compensation claim~~] Claim adjuster's limited license: Issuance..... \$150
- (8) Independent bill reviewer's license: Issuance \$160
- (9) Limited producer's license: Issuance \$120
- (10) Managing general agent's license: Issuance \$150
- (11) Reinsurance intermediary's license: Issuance \$150
- (12) Surplus lines broker's license: Issuance \$300
- (13) Service contract provider's registration: Issuance \$150
- (14) Approved course provider certificate: Issuance \$200
- (15) Approved continuing education course certificate: Issuance \$60
- (16) Vehicle protection product warrantor's registration: Issuance \$150
- (17) Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.
- (18) Limited line motor vehicle rental company producer's license: Issuance \$2,000
- ~~[(19) Life settlement contract provider's license: Issuance \$150~~
- ~~(20) Life settlement contract broker's license: Issuance \$150]~~
- (19) Legal service plan certificate of authority:
 - Issuance before July 1, 2014 \$1,000
 - Issuance on or after July 1, 2014 \$500
- ~~[(21)]~~ (20) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$1,200 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$100 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$150 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$90 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$90 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$90 per year for all services (including extension of the license) for a [workers' compensation] claims adjuster's limited license;
- (7) \$120 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$90 per year for all services (including extension of the license) for a producer's limited license;
- (9) \$150 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) \$150 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$90 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) \$150 per year for all services (including renewal of registration) for a service contract provider;
- (13) \$130 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$40 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) \$150 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) ~~[\$40]~~ A fee to be established by the commissioner for [a] each criminal history record check[;] and fingerprinting;
- (17) \$1,200 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer;
- ~~[(18) \$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract provider; and~~
- ~~(19) \$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract broker.]~~
- (18) \$1,000 per year for all services provided before July 1, 2014, (including extension of the certificate) for an authorized legal service plan; and
- (19) \$500 per year for all services provided on or after July 1, 2014, (including extension of the certificate) for an authorized legal service plan.

The services referred to in paragraphs (1) to (19) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

PART III

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 10. This Act shall take effect upon its approval; provided that the amendments made to section 431:7-101, Hawaii Revised Statutes, by section 8 of this Act shall not be repealed upon the repeal and reenactment of that section pursuant to section 7 of Act 59, Session Laws of Hawaii 2010.

(Approved July 5, 2011.)

Notes

1. Prior to amendment "other" appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 187

S.B. NO. 1025

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 707-711, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of assault in the second degree if:
- (a) The person intentionally or knowingly causes substantial bodily injury to another;
 - (b) The person recklessly causes serious or substantial bodily injury to another;
 - (c) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;
 - (d) The person intentionally or knowingly causes bodily injury to another with a dangerous instrument;
 - (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this paragraph, “educational worker” means: any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school; a person who is a volunteer, as defined in section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education; or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function;
 - (f) The person intentionally or knowingly causes bodily injury to any emergency medical services provider who is engaged in the performance of duty. For the purposes of this paragraph, “emergency medical services provider” means emergency medical services personnel, as defined in section 321-222, and physicians, physician’s assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians,

and social workers, providing services in the emergency room of a hospital; [øf]

- (g) The person intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, "a person employed at a state-operated or -contracted mental health facility" includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility[-]; or
- (h) The person intentionally or knowingly causes bodily injury to any firefighter or water safety officer who is engaged in the performance of duty. For the purposes of this paragraph, "firefighter" has the same meaning as in section 710-1012 and "water safety officer" means any public servant employed by the United States, the State, or any county as a lifeguard or person authorized to conduct water rescue or ocean safety functions."

PART II

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§708- Unauthorized entry in a dwelling in the first degree. (1) A person commits the offense of unauthorized entry in a dwelling in the first degree if the person intentionally or knowingly enters unlawfully into a dwelling and another person was, at the time of the entry, lawfully present in the dwelling who:

- (a) Was sixty-two years of age or older;
 - (b) Was an incapacitated person; or
 - (c) Had a developmental disability.
- (2) For the purposes of this section:

"Developmental disability" shall have the same meaning as in section

333E-2.

"Incapacitated person" shall have the same meaning as in section 560:5-102.

(3) Unauthorized entry in a dwelling in the first degree is a class B felony.

(4) It shall be an affirmative defense that reduces this offense to a misdemeanor that, at the time of the unlawful entry:

- (a) There was a social gathering of invited guests at the dwelling the defendant entered;
- (b) The defendant intended to join the social gathering as an invited guest; and
- (c) The defendant had no intent to commit any unlawful act other than the entry."

SECTION 3. Section 708-812.6, Hawaii Revised Statutes, is amended to read as follows:

"[§708-812.6]] Unauthorized entry in a dwelling[-] in the second degree.

(1) A person commits the offense of unauthorized entry in a dwelling in the second degree if the person intentionally or knowingly enters unlawfully into a dwelling [~~with reckless disregard of the risk that another person was law-~~

fully present in the dwelling,] and another person was lawfully present in the dwelling.

(2) Unauthorized entry in a dwelling in the second degree is a class C felony.

(3) It [is] ~~shall be~~ an affirmative defense that reduces this offense to a misdemeanor that, at the time of the unlawful entry:

- (a) There was a social gathering of invited guests at the dwelling the defendant entered;
- (b) The defendant intended to join the social gathering; and
- (c) The defendant had no intent to commit any unlawful act other than the entry.”

PART III

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved July 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 188

S.B. NO. 742

A Bill for an Act Relating to the State Fire Council.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the state fire council needs to employ staff to accomplish its statutory duties and responsibilities. The state fire council, among other things:

- (1) Appoints advisory committees comprised of representatives from each county fire department to assist in drafting the state fire code;
- (2) Assists in coordinating statewide training, data collection, and contingency planning needs for firefighters;
- (3) Prescribes standard procedures and forms relating to inspections, investigations, and reporting of fires;
- (4) Approves plans for cooperation among the county fire departments;
- (5) Advises the governor and the legislature with respect to fire prevention and protection, life safety, and any other functions or ac-

tivities for which the various county fire departments are generally responsible;

- (6) Serves as a point of contact through which all applications to the federal government for federal grant assistance for fire-related projects shall be made and administers those federal grants;
- (7) Coordinates statewide fire and life safety training, education, and inspection of state buildings and facilities; and
- (8) Prescribes standard procedures and forms relating to inspections, investigations, and reporting of fires.

Currently, the state fire council has one part-time administrative assistant position, and there is no statutory provision for the hiring of staff. More positions are needed for the state fire council to fulfill its statutory mandate and to protect the public safety.

The purpose of this Act is to allow the state fire council to employ an administrator and administrative assistant.

SECTION 2. Chapter 132, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§132- Administrative staffing for the state fire council. (a) The state fire council may employ on a full-time basis an administrator and administrative assistant, without regard to chapters 76 and 89. The administrator shall administer the affairs of the state fire council at the direction of the council. The state fire council shall determine the compensation for the administrator and the administrative assistant.

(b) The administrator and administrative assistant shall assist the state fire council in carrying out the duties of the council under section 132-16, including:

- (1) Administration of the daily operations of the state fire council;
- (2) Administration of the adoption process of the state fire code by the counties;
- (3) Submission of applications for and expending of federal grants and assistance for fire-related projects;
- (4) Administration of the reduced ignition propensity cigarette program;
- (5) Coordination of the statewide fire and life safety training, education, and data collection programs; and
- (6) Implementation of other related duties as directed by the state fire council.

(c) The budgetary requirements for conducting meetings and other related functions of the state fire council, including the salaries of the administrator and administrative assistant, shall be included in the budget of the department of labor and industrial relations.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 189

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that a special fund needs to be established for the state fire council for administration of the reduced ignition propensity cigarette program. Money for the fund should come from the fees collected by the state fire council under the program as provided for in section 132C-4, Hawaii Revised Statutes. Since the program's implementation on September 30, 2009, approximately \$390,000 has been collected. The special fund will be used to, among other things, fund staff positions within the state fire council for an administrator and an assistant to execute the statutory duties of the program.

SECTION 2. Chapter 132C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§132C- Reduced ignition propensity cigarette program special fund. (a) There is established in the state treasury a reduced ignition propensity cigarette program special fund, into which shall be deposited all moneys collected by the state fire council from the reduced ignition propensity cigarette program pursuant to section 132C-4. All interest earned or accrued on moneys deposited in the fund shall become part of the fund.

(b) Moneys in the reduced ignition propensity cigarette program special fund shall be administered and expended by the state fire council to defray the actual cost of activities and requirements of section 132C-4, including employing one full-time administrator and one full-time assistant whose duties include:

- (1) Adopting administrative rules for program implementation, establishing compliance inspections, and approving forms and enforcement procedures and guidelines;
- (2) Receiving certifications for approximately six hundred different brands and styles of cigarettes from the manufacturers;
- (3) Compiling a list of the cigarette brands and styles for which manufacturers have submitted certifications, verifying tax stamp compliance with the department of the attorney general, and posting the list of certified brands and styles on a state website for informational purposes only;
- (4) Reviewing and approving, as needed, any alternative test methods or fire standard compliance markings submitted by the manufacturer; and
- (5) If needed, submitting certified cigarettes to an accredited laboratory for testing to verify that performance standards have been met.”

SECTION 3. Section 132C-4, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“[§132C-4] Certification; marking[-]; administration. (a) Each manufacturer shall submit to the state fire council written certification attesting that each cigarette has been tested in accordance with, and has met the performance standard required under section 132C-3. The description of each cigarette listed in the certification shall include:

- (1) The brand or trade name on the package;

- (2) Style, such as light or ultra light;
- (3) Length in millimeters;
- (4) Circumference in millimeters;
- (5) Flavor, such as menthol, if applicable;
- (6) Filter or nonfilter;
- (7) Package description, such as a soft pack or box;
- (8) The mark approved pursuant to subsection (b);
- (9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
- (10) The date that the testing occurred.

Each cigarette certified under this subsection shall be recertified every three years. For each cigarette listed in a certification, a manufacturer shall pay to the state fire council a \$375 fee[.] to be deposited into the reduced ignition propensity cigarette program special fund under section 132C- . The state fire council is authorized to annually adjust this fee to ensure it defrays the actual costs of the administration and staffing requirements and processing, testing, enforcement, inspection, and oversight activities required by this chapter.

The certifications shall be made available to the attorney general for purposes consistent with this chapter.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved July 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 190

S.B. NO. 758

A Bill for an Act Relating to Small Business.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii compliance express is an electronic system that allows vendors doing business with state or county agencies to quickly and easily obtain proof that they are compliant with applicable laws. Hawaii compliance express expedites a vendor’s ability to furnish proof of compliance with the requirements of section 103D-310(c), Hawaii Revised Statutes, by providing an online “Certificate of Vendor Compliance” for the business entity. This single certificate eliminates the need to obtain individual hard copies of certificates from the Internal Revenue Service and department of taxation, department of labor and industrial relations, and department of commerce and consumer affairs. The service includes real-time monitoring of the vendor’s status of compliance with each agency and automatically notifies the vendor by email any time the compliance status is changed.

The Hawaii compliance express was launched in September 2005, and has grown from one hundred seventy-nine vendors the first year to 4,117 vendors through mid-December 2010. The department of accounting and general services accounting division estimates that approximately seventy per cent of invoices processed for payment through their office use the Hawaii compliance express

certificate, versus the three paper certificates. The minimal cost to a vendor to use the Hawaii compliance express is \$12 per year, a decrease from \$15 when the system was launched in 2005.

Under current law, vendors must provide proof of compliance in order to receive a contract greater than \$15,000 with state and county government entities in Hawaii.

In 2010, the senate committee on economic development and technology and the house committee on economic revitalization, business, and military affairs convened an informal small business discussion group to address the most critical issues facing the small-business sectors within Hawaii's economy. Representatives from the Chamber of Commerce of Hawaii, construction and trades industries, community nonprofit organizations, the agricultural sector, food and restaurant industries, retailing, the science and technology sector, the commercial transportation industry, and interested stakeholders developed a package of bills that addresses the most pressing problems facing Hawaii's small-business community.

The purpose of this Act is to support the findings of the small business working group and its recommendations to extend the use of Hawaii compliance express for small-business vendors, affording them the same savings of time and money in the contracting process.

SECTION 2. Section 103D-310, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393. Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702. The procuring officer shall verify compliance with this subsection for all contracts awarded pursuant to sections 103D-302, 103D-303, 103D-304, and 103D-306[~~5~~], and for contracts and procurements of \$2,500 or more awarded pursuant to section 103D-305; provided that the attorney general may waive the requirements of this subsection for contracts for legal services if the attorney general certifies in writing that comparable legal services are not available in this State.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 6, 2011.)

ACT 191

H.B. NO. 616

A Bill for an Act Relating to Child Custody.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Electronic communication” means communication that is facilitated by any wired or wireless technology via the Internet or any other electronic me-

dia, including but not limited to communication by telephone, electronic mail, instant messaging, video conferencing, and web camera.”

SECTION 2. Section 571-46, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court also may consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child;
- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child’s wishes as to custody shall be considered and be given due weight by the court;
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court, hereinafter referred to as child custody evaluators, shall make investigations and reports that shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated; and provided further that the court shall define the requirements to be a court-appointed child custody evaluator, the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts, and the powers of the courts over child custody evaluators to effectuate the best interests of a child in a contested custody dispute pursuant to this section. Where there is no child custody evaluator available that meets the requirements and standards, or any child custody evaluator to serve indigent parties, the court may appoint a person otherwise willing and available[[];[]]
- (5) The court may hear the testimony of any person or expert, produced by any party or upon the court’s own motion, whose skill, insight, knowledge, or experience is such that the person’s or expert’s testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification

- or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award;
- (7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;
 - (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;
 - (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court shall consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:
 - (A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;
 - (B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and
 - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;
 - (10) A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;
 - (11) In a visitation order, a court may:
 - (A) Order an exchange of a child to occur in a protected setting;
 - (B) Order visitation supervised by another person or agency;
 - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
 - (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
 - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
 - (F) Prohibit overnight visitation;
 - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;

- (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
- (I) Order the address of the child and the victim to be kept confidential;
- (12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim's status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;
- (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; ~~and~~
- (14) A supervised visitation center shall provide a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence~~[-]; and~~
- (15) The court may include in visitation awarded pursuant to this section visitation by electronic communication provided that the court shall additionally consider:
 - (A) The potential for abuse or misuse of the electronic communication, including the equipment used for the communication, by the person seeking visitation or by persons who may be present during the visitation or have access to the communication or equipment;
 - (B) Whether the person seeking visitation has previously violated a temporary restraining order or protective order; and
 - (C) Whether adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the custodial parent.

The court may set conditions for visitation by electronic communication, including visitation supervised by another person or occurring in a protected setting. Visitation by electronic communication shall not be used to:

 - (A) Replace or substitute an award of custody or physical visitation except where:
 - (i) Circumstances exist that make a parent seeking visitation unable to participate in physical visitation, including military deployment; or
 - (ii) Physical visitation may subject the child to physical or extreme psychological harm; or
 - (B) Justify or support the relocation of a custodial parent.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 6, 2011.)

ACT 192

S.B. NO. 1221

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103B-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) A contractor awarded any contract shall ensure that Hawaii residents compose not less than eighty per cent of the workforce employed to perform the contract on a particular construction project, as determined under subsection (b). Prior to an award of a contract, the contractor may withdraw a bid without penalty if the contractor finds that it is unable to comply with this subsection.”

2. By amending subsections (c) and (d) to read:

“(c) ~~[Every contractor shall comply with this chapter for the entire duration of the contract.]~~ Certification of compliance with this chapter shall be made under oath by an officer of the general contractor and applicable subcontractor to the procurement officer ~~[on a monthly basis.]~~ with the notice of completion of the contract.

(d) A general contractor or subcontractor who fails to comply with this chapter shall be subject to ~~[any of the following]~~ sanctions[;] as follows:

- ~~[(1) Temporary suspension of work on the project until the contractor or subcontractor complies with this chapter;~~
- ~~(2) Withholding] (1) With respect to the general contractor, withholding of final payment on the contract [or subcontract, as applicable,] until the contractor [or subcontractor] complies with [this chapter;~~
- ~~(3) Permanent disqualification of the contractor or subcontractor from any further work on the project;~~
- ~~(4) Recovery by the State or county, as applicable, of any moneys expended on the contract or subcontract, as applicable;] subsection (a); or~~
- ~~[(5) Proceedings] (2) With respect to the general contractor and subcontractor, proceedings for debarment or suspension of the contractor or subcontractor under section 103D-702[;]~~

provided that a general contractor shall not be sanctioned for noncompliance with this section by a subcontractor of that general contractor on the same contract.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 6, 2011.)

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the federal government helps support the production of low-income rental housing by providing subsidies to private owners of multifamily housing. The legislature also finds that the affordability of housing units that receive subsidies is not permanently assured. Restrictions on rent levels, tenant eligibility, and overall operations expire after a certain period of time. When a contract with the United States Department of Housing and Urban Development or the United States Department of Agriculture expires, the owner of the building can then convert to renting units at market rate prices. Hawaii has had to provide funds to preserve some of these affordable rental housing projects.

The legislature also finds that the cost of living in Hawaii has been and continues to be high. A significant contributing factor to the high cost of living in Hawaii is the high cost of housing. United States Department of Housing and Urban Development and United States Department of Agriculture housing projects are among very few low-cost rental housing resources available to households with incomes at or below eighty per cent of the median family income, as determined by the United States Department of Housing and Urban Development.

The purpose of this Act is to preserve United States Department of Housing and Urban Development and United States Department of Agriculture housing projects in Hawaii as affordable rental housing projects.

SECTION 2. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§201H- Affordable rental housing development program. (a) There is established the affordable rental housing development program under the Hawaii housing finance and development corporation.

(b) The purpose of this program shall be to preserve affordable rental housing units.

(c) For the purposes of this section, activities eligible for assistance from the affordable rental housing development program shall include rehabilitation, acquisition, or preservation of multifamily rental housing units for persons and families with incomes at or below eighty per cent of the median family income, as determined by the United States Department of Housing and Urban Development.

(d) The corporation shall identify properties whose contracts with either the United States Department of Housing and Urban Development or the United States Department of Agriculture are set to expire on or before January 1, 2012, and the corporation shall contact the project owners to initiate negotiations to renew or preserve the existing subsidy contracts; provided that:

- (1) Nonprofit organizations shall be given priority to take over expiring subsidy contracts; and
- (2) Nonprofit organizations shall be given priority over for-profit organizations, if federal government funds are needed for the acquisition or rehabilitation of a project.”

SECTION 3. (a) The Hawaii housing finance and development corporation shall submit a report to the legislature no later than twenty days prior to the convening of the 2012 regular session.

(b) The report shall include the:

- (1) Names and addresses of any rental housing projects in Hawaii that have a rental subsidy contract with the United States Department of Housing and Urban Development or United States Department of Agriculture;
- (2) Dates on which the rental housing projects' federal rental subsidy contracts are set to expire; and
- (3) Names and addresses of any rental housing projects obtained by nonprofit organizations that have since been renewed or preserved as affordable rental housing.

SECTION 4. Notwithstanding any law to the contrary, if any public housing project that is managed with public funds is redeveloped or reconstructed to provide for new units, different target income groups, or mixed use development, the number of affordable units shall increase or remain the same. Affordable units under this section shall be held to the same maintenance requirements as those of different target income groups or mixed use development, and shall not be subject to deferred maintenance.

For the purposes of this section, "affordable" in the case of rental units for qualified tenants means available for households with incomes at or below eighty per cent of the median family income, as determined by the United States Department of Housing and Urban Development.

SECTION 5. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules in effect as a result of this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2011.

(Approved July 6, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 194

S.B. NO. 1519

A Bill for an Act Relating to Mortgage Loan Originators.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 454F, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

“§454F- Exempt sponsoring mortgage loan originator company; registration. Any person exempt from the licensing provisions of this chapter may register with the Nationwide Mortgage Licensing System for the purpose of sponsoring a mortgage loan originator required to be licensed by this chapter.

§454F- Sponsorship by mortgage loan origination company or exempt sponsoring mortgage loan originator company. All mortgage loan originators shall be sponsored by a mortgage loan originator company or by an exempt sponsoring mortgage loan originator company.

§454F- Decision denying application subject to administrative hearing. (a) Within fifteen days following receipt of a decision denying an application, an applicant may petition the commissioner for an administrative hearing that shall be held in accordance with chapter 91 and the rules of the department of commerce and consumer affairs. If a petition for an administrative hearing is not filed within the time specified, the commissioner’s decision denying the application shall become a final decision and order denying the application.

(b) Upon the receipt of a petition for an administrative hearing, the commissioner shall assign the petition to a hearings officer for further proceedings pursuant to the rules of the department of commerce and consumer affairs. The commissioner shall issue a written final decision and order, following the hearings officer’s transmittal to the commissioner of the entire record together with the recommended decision, any timely filed exceptions, and any timely filed statements in support of the recommended decision.

§454F- Abandoned applications. (a) An application for licensure pursuant to this chapter shall be considered abandoned if an applicant fails to provide evidence of continued efforts to complete the licensing process for six consecutive months. No refund of filing fees shall be provided to an applicant for an abandoned application. The commissioner shall not be required to act on any abandoned application and is not required to retain abandoned applications or supporting documents. The commissioner may withdraw abandoned applications from the Nationwide Mortgage Licensing System.

(b) For purposes of this section, failure to provide evidence of continued efforts to complete the licensing process includes:

- (1) Failure to submit required documents and other information requested by the commissioner within six months from the last date the documents or other information were requested; or
- (2) Failure to provide the commissioner with any written communication indicating that the applicant is attempting to complete the licensing process for a period of six months.

(c) If an application is deemed abandoned by the commissioner, the applicant may reapply for licensure after payment of applicable fees and compliance with the licensing requirements in effect at the time of reapplication.

(d) An applicant may withdraw an application that has been submitted under this chapter at any time; provided that no refund shall be issued. The commissioner shall treat a withdrawn application as an abandoned application according to this section.

§454F- Duties of qualified individual and branch manager. (a) A qualified individual shall have the duty to manage and supervise the mortgage loan origination activities of a licensed mortgage loan originator company’s principal office and the licensed mortgage loan originators located at or working out of

that location. A qualified individual shall hold a license as a mortgage loan originator issued pursuant to this chapter.

(b) A branch manager shall have the duty to directly manage and supervise a licensed mortgage loan originator company's branch office and the licensed mortgage loan originators located at or working out of that location. A branch manager shall be physically present in the branch office and shall hold a license as mortgage loan originator issued pursuant to this chapter.

(c) A qualified individual for a mortgage loan originator company and a branch manager for a branch office shall be responsible for:

- (1) Supervising the maintenance and accounting of client trust accounts and disbursements from those accounts;
- (2) Supervising the maintenance of all records, contracts, and documents of the mortgage loan originator company;
- (3) Supervising all mortgage loan originator agreements and mortgage loan documents and the handling of these documents by the licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;
- (4) Supervising all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;
- (5) Developing and enforcing policies and procedures relating to the handling of residential mortgage loan transactions and the professional conduct of the licensed mortgage loan originators and other staff;
- (6) Developing and monitoring compliance with a policy on continuing education requirements for all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company pursuant to the requirements of this chapter and the rules of the commissioner;
- (7) Ensuring that the licenses of all mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company, and the license of the mortgage loan originator company are current and active, and that all required fees are timely paid to the mortgage loan recovery fund;
- (8) Establishing and conducting a training program for all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;
- (9) Ensuring that all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company are provided adequate information and training on the latest amendments to licensing laws and rules and any other applicable laws and rules;
- (10) Notifying the commissioner of the termination of the employment or independent contractor relationship of licensed mortgage loan originators who were employed by or were independent contractors of the mortgage loan originator company upon the termination of employment or the independent contractor relationship; and
- (11) Ensuring that the records, loan documents, and agreements including mortgage loan originator agreements are retained for seven years on paper or in electronic format by the mortgage loan originator company."

SECTION 2. Section 454F-1, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to be appropriately inserted and to read:

“Branch manager” means an individual who is designated and employed by a mortgage loan originator company to be responsible for the activities in the conduct of business of the licensed mortgage loan originator company’s branch office, in conducting the business of that mortgage loan originator company’s branch office.

“Exempt sponsoring mortgage loan originator company” means any person exempt from or not included in the licensing requirements of this chapter who registers with the Nationwide Mortgage Licensing System for purposes of sponsoring a mortgage loan originator.

“Qualified individual” means an individual who is responsible for the oversight of mortgage loan originators that are employed by or contracted to perform work for a mortgage loan originator company.

“Sponsor” means to create a relationship through the Nationwide Mortgage Licensing System for the purpose of appropriately supervising a mortgage loan originator’s activities.”

2. By amending the definitions of “licensee” and “mortgage loan originator company” to read:

“Licensee” means a mortgage loan originator, a mortgage loan originator company, or a person who is required to be licensed under this chapter. Licensee does not include an exempt registered mortgage loan originator or exempt [registered] sponsoring mortgage loan originator company as defined by this section.

“Mortgage loan originator company” means:

- (1) An individual not exempt under section 454F-2 who engages in the business of a mortgage loan originator as a sole proprietorship; or
- (2) A person not exempt under section 454F-2 who employs or [uses the exclusive] contracts for the services of one or more mortgage loan originators licensed or required to be licensed under this chapter.”

3. By deleting the definition of “exempt registered mortgage loan originator company”.

~~[“Exempt registered mortgage loan originator company” means any person, including an insured depository institution, who is required to be licensed by any other state or federal law but is not required to be licensed under this chapter, and has the obligation to register with the Nationwide Mortgage Licensing System because one or more of the person’s employees engage in the business of a mortgage loan originator.”]~~

SECTION 3. Section 454F-1.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§454F-1.5] Registration with Nationwide Mortgage Licensing System required.~~ (a) All mortgage loan originators, mortgage loan originator companies, ~~exempt sponsoring mortgage loan originator companies,~~ and any other person in this State that ~~[originate] originates~~ a residential mortgage loan, unless exempt under section 454F-2, shall register with the Nationwide Mortgage Licensing System.

(b) ~~Exempt registered mortgage loan originators [and exempt mortgage loan originator companies],~~ unless exempt under section 454F-2, shall register and maintain a unique identifier through the Nationwide Mortgage Licensing System, but shall not be required to be licensed under this chapter.”

SECTION 4. Section 454F-2, Hawaii Revised Statutes, is amended to read as follows:

“§454F-2 Exemptions. This chapter shall not apply to the following:

- (1) An exempt registered mortgage loan originator, when acting for an insured depository institution, a subsidiary of an insured depository institution regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with, or on behalf of, an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence;
- (4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client unless the attorney is compensated by a lender, a mortgage loan originator company, or other mortgage loan originator or by an agent of a lender, mortgage loan originator company, or other mortgage loan originator;
- (5) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity is compensated by a lender, a mortgage loan originator company, or other mortgage loan originator or by an agent of the lender, mortgage loan originator company, or other mortgage loan originator;
- (6) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in ~~[section]~~ Section 101(53D) of Title 11, United States Code;
- (7) An exempt ~~[registered]~~ sponsoring mortgage loan originator company as defined by this chapter~~;~~ except as otherwise provided by this chapter; or
- (8) An insured depository institution.”

SECTION 5. Section 454F-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In connection with an application for a license under this chapter, the applicant, at a minimum, shall furnish ~~[to the commissioner and]~~ to the Nationwide Mortgage Licensing System information concerning the applicant’s identity, including:

- (1) Fingerprints of the applicant and, ~~[in the case of]~~ if an applicant ~~[that]~~ is not an individual, each of the applicant’s control persons, executive officers, directors, general partners, and managing members for submission to the Federal Bureau of Investigation~~;~~ and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check; and
- (2) Personal history and experience of the applicant and, ~~[in the case of]~~ if an applicant ~~[that]~~ is not an individual, each of the applicant’s control persons, executive officers, directors, general partners, and managing members in a form prescribed by the Nationwide Mortgage Licensing System including the submission of authorization for the Nationwide Mortgage Licensing System and the commissioner to obtain:

- (A) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 United States Code 1681 et seq.; and
- (B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction[-];

provided that the commissioner may use any information obtained pursuant to this subsection or through the Nationwide Mortgage Licensing System to determine an applicant's demonstrated financial responsibility, character, and general fitness for licensure."

SECTION 6. Section 454F-4.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[§454F-4.5]~~ **Automatic secondary review of license application.** ~~[The commissioner shall establish, by rule pursuant to chapter 91, a procedure for the secondary review of]~~ (a) For each application that was determined on initial review to fail to meet the criteria for licensure[-], the commissioner shall provide a secondary level of review of the application which shall include the:

- (1) Overall character and fitness of the applicant, taking into account all relevant circumstances and weighing all mitigating factors appropriately; and
- (2) Assurance that non-discretionary licensing criteria have been applied correctly.
- (b) The commissioner may request that an applicant provide any additional or supplemental information that the commissioner deems necessary for a secondary review of an application."

SECTION 7. Section 454F-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~"(a) The commissioner shall not issue a license pursuant to this chapter unless the commissioner makes at a minimum the following findings:~~

- ~~(1) The applicant, [or in the case of] if an applicant [that] is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has never had a mortgage loan originator or a mortgage loan originator company license revoked in any jurisdiction; provided that a subsequent formal vacation of a revocation shall not be deemed a revocation;~~
- ~~(2) The applicant, [or in the case of] if an applicant [that] is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of, or pled guilty or nolo contendere, or been granted a deferred acceptance of a guilty plea under federal law or under chapter 853 to a felony in a domestic, foreign, or military court:~~
 - ~~(A) During the seven-year period preceding the date of the application for licensing and registration; or~~
 - ~~(B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;~~

~~provided that any pardon of a conviction shall not be deemed a conviction for purposes of this section;~~

- ~~(3) The applicant, [or in the case of] if an applicant [that] is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has demonstrated financial responsibility, character, and general fitness to command~~

the confidence of the community and to warrant a determination that the applicant shall operate honestly, fairly, and efficiently pursuant to this chapter. For purposes of this paragraph, a person is not financially responsible when the person has shown a disregard in the management of the person's financial condition. A determination that a person has ~~[not shown financial responsibility]~~ shown a disregard in the management of the person's financial condition may be based on:

- (A) Current outstanding judgments, except judgments solely as a result of medical expenses;
 - (B) Current outstanding tax liens or other government liens and filings;
 - (C) Foreclosures within the past three years; and
 - (D) A pattern of seriously delinquent accounts within the past three years;
- (4) The applicant, ~~[or in the case of]~~ if an applicant ~~[that]~~ is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of, plead guilty or nolo contendere to, or been granted a deferred acceptance of a guilty plea under federal law or chapter 853 to any misdemeanor involving an act of fraud, dishonesty, breach of trust, or money laundering;
 - (5) The applicant, ~~[or in the case of]~~ if an applicant ~~[that]~~ is not an individual, each individual mortgage loan originator who is employed by the mortgage loan originator company or who provides exclusive services to the applicant as a mortgage loan originator, has completed the pre-licensing education requirement described in section 454F-6;
 - (6) The applicant, ~~[or in the case of]~~ if an applicant ~~[that]~~ is not an individual, each individual mortgage loan originator who is employed by the mortgage loan originator company or who provides exclusive services to the applicant as a mortgage loan originator, has passed a written test that meets the test requirements in section 454F-7; and
 - (7) The applicant has met the mortgage loan recovery fund requirement as required in section 454F-41."

SECTION 8. Section 454F-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The minimum standards for license renewal for mortgage loan originator companies shall include the following:

- (1) The mortgage loan originator company continues to meet the minimum standards for licensure established pursuant to section 454F-5;
- (2) The mortgage loan originator company's ~~[qualified]~~ branch manager [has] and qualified individual have satisfied the minimum standards for license renewal; and
- (3) The mortgage loan originator company has paid all required fees for renewal of the license."

SECTION 9. Section 454F-9, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Continuing education courses as described in subsection (a) and approved by the Nationwide Mortgage Licensing System for any state, that are suc-

cessfully completed by a licensed mortgage loan originator, shall be accepted as credit towards completion of continuing education requirements in this State.”

SECTION 10. Section 454F-10.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§454F-10.5]]~~ Authorized places of business; designation of qualified individuals and branch managers; branch offices~~[-]; out-of-state headquarters; relocation.~~ (a) Every mortgage loan originator company licensed under this chapter shall have and maintain a principal place of business in the State and shall designate a qualified individual who is licensed as a mortgage loan originator pursuant to this chapter to oversee mortgage loan originators employed or contracted by the company. If the qualified individual is physically located at a branch office, the qualified individual may also be designated as the branch manager.

(b) A mortgage loan originator company shall not maintain any branch offices in the State in addition to its principal place of business without the prior written approval of the commissioner. An application to establish a branch office shall be submitted with a nonrefundable application fee as required by section 454F-22. A mortgage loan originator company that ~~established a~~ establishes one or more branch ~~[office]~~ offices pursuant to this subsection shall designate a branch manager for each branch office located at ~~[each]~~ the branch office to oversee that branch office. Every branch manager shall be licensed as a mortgage loan originator pursuant to this chapter.

(c) A mortgage loan originator company shall not relocate any office in this State without the prior written approval of the commissioner. An application to relocate an office shall set forth the reasons for the relocation, the street address of the proposed relocated office, and other information that may be required by the commissioner. An application to relocate an office pursuant to this subsection shall be submitted with a nonrefundable fee as required by section 454F-22.

(d) A mortgage loan originator company shall give the commissioner notice of its intent to close a branch office at least thirty days prior to the closing. The notice shall:

- (1) State the intended date of closing; and
- (2) Specify the reasons for the closing.

~~(e) A mortgage loan originator company that maintains its headquarters outside of the State shall:~~

- ~~(1) Designate an office in this State as its principal place of business in this State;~~
- ~~(2) Apply for and obtain approval from the commissioner to designate its principal place of business in this State as a branch office pursuant to this section; and~~
- ~~(3) Designate a qualified individual who shall hold a license as a mortgage loan originator pursuant to this chapter; provided that the qualified individual may be the same person designated as the branch manager.”~~

SECTION 11. Section 454F-10.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner shall approve a request for change of control under subsection (a) if, after investigation, the commissioner determines that the person or group of persons ~~[requesting approval has]~~ who will obtain control are licensed pursuant to this chapter; have the competence, experience, character, and general fitness to control the licensee or person in control of the licensee in

a lawful and proper manner^[7]; and that the interests of the public will not be jeopardized by the change of control.”

SECTION 12. Section 454F-17, Hawaii Revised Statutes, is amended to read as follows:

“**§454F-17 Prohibited practices.** It shall be a violation of this chapter for a licensee or person subject to this chapter to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice related to mortgage loan origination activities toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into any contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;
- (7) Fail to make disclosures as required by this chapter and any other applicable state or federal law including rules or regulations ~~[thereunder;]~~ adopted pursuant to state or federal law;
- (8) Fail to comply with this chapter or any order or rule issued or adopted under the authority of this chapter, or fail to comply with any other state or federal law, including the rules and regulations adopted ~~[thereunder;]~~ pursuant to state or federal law applicable to any business authorized or conducted pursuant to this chapter;
- (9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;
- (10) Negligently or knowingly make any false statement or provide any misleading information or knowingly and wilfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System, including an application for a license under this chapter, or in connection with any examination or investigation conducted by the commissioner or another government agency;
- (11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of a property;
- ~~[(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;~~

- (13) (12) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;
- (14) (13) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction; ~~or~~
- (15) (14) Deliver a misleading or deceptive communication or advertisement, whether written, electronic, or oral, when marketing or soliciting a residential mortgage loan~~[-A]; provided that:~~
 - (A) A communication or advertisement that uses the name or trademark of a financial institution as defined in section 412:1-109 or its affiliates or subsidiaries, or infers that the communication or advertisement is from, endorsed by, is related to, or is the responsibility of the financial institution is a misleading or deceptive communication[-Advertising];
 - (B) Advertising that a specific interest rate, points, or financial terms are available when the rates, points, or financial terms are not actually available is a misleading or deceptive communication[-];
- (16) Fill in or complete any blank on a final residential mortgage loan application that requests material information including financial information without adequate supporting documentation provided by the borrower;
- (17) Fill in or complete any blank on any mortgage or note evidencing or securing the residential mortgage loan which relates to the amount, interest rate, term, or monthly payment of the residential mortgage loan;
- (18) Originate a residential mortgage loan based primarily on the current market value of the borrower's collateral rather than on the borrower's ability to repay the loan according to its terms; provided that the sale of the property is made to a bona fide buyer; and provided further that this paragraph shall not apply to a reverse mortgage as defined under Title 12 Code of Federal Regulations Section 226.33;
- (19) Advertise terms of a residential mortgage loan in violation of section 226.16 or 226.24 of Regulation Z of the Board of Governors of the Federal Reserve System; or
- (20) Encourage a borrower to misrepresent, inflate, or fabricate the source or amount of a borrower's actual income or assets in the application or underwriting process for a residential mortgage loan."

SECTION 13. Section 454F-22, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§454F-22~~]]~~ Mortgage loan originator ~~[and], mortgage loan originator company, and exempt sponsoring mortgage loan originator company fees.~~ (a) A mortgage loan originator shall pay the following fees to obtain and maintain a valid mortgage loan originator license:

- (1) Initial application fee of \$500;
- (2) Annual license renewal fee of \$300;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and
- (5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.

(b) A mortgage loan originator company shall pay the following fees to maintain a valid mortgage loan originator company license or branch license:

- (1) Fees payable for a principal office of a mortgage loan originator company:
 - (A) Initial application fee of \$900;
 - (B) Annual license renewal fee of \$600;
 - (C) Reinstatement fee of \$100;
 - (D) Late fee of \$25 per day; and
 - (E) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each control person, executive officer, director, general partner, and manager; and
- (2) Fees payable for each branch office of a mortgage loan originator company:
 - (A) Initial application fee of \$250;
 - (B) Annual license renewal fee of \$100;
 - (C) Reinstatement fee of \$100; and
 - (D) Late fee of \$25 per day.

(c) An exempt sponsoring mortgage loan originator company shall pay the following fees to maintain a valid registration in the Nationwide Mortgage Licensing System:

- (1) Initial registration fee of \$200;
- (2) Annual registration renewal fee of \$150; and
- (3) Late fee of \$25 per day.

[(e)] (d) In addition to fees charged by the Nationwide Mortgage Licensing System, a licensee shall pay to the commissioner a fee of \$50 for each of the following amendments to information provided to the Nationwide Mortgage Licensing System that require the review of the commissioner:

- (1) Change of physical location, including address change for branch office or principal place of business;
- (2) Addition or deletion of a “d/b/a” assignment;
- (3) Change of manager; or
- (4) Change of legal name.

The commissioner, upon a showing of good cause, may waive any fee set forth in this subsection.

[(d)] (e) The fees established by this section are nonrefundable and are in addition to any fees established and charged by the Nationwide Mortgage Licensing System, an approved educational course provider, an approved educational testing provider, a law enforcement agency for fingerprints and background checks, or a credit reporting agency used by the Nationwide Mortgage Licensing System.

[(e)] (f) The commissioner may establish, by rule pursuant to chapter 91, any other fees or charges necessary for the administration of this chapter.”

SECTION 14. Section 454F-42, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The court shall proceed upon an application to recover from the mortgage loan recovery fund in a summary manner and, at hearing, the aggrieved person shall be required to show:

- (1) The person is not a spouse of the judgment debtor or the personal representative of a spouse of the judgment debtor;
- (2) The person has complied with all the requirements of this section;
- (3) The person has obtained a judgment [~~or settlement~~] pursuant to section 454F-41(a) that states the amount of the judgment

- and the amount owed on the judgment debt as of the date of the application;
- (4) The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and
 - (A) The search has uncovered no personal or real property or other assets liable to be sold or applied; or
 - (B) The search has uncovered personal or real property or other assets liable to be sold or applied, the person has taken all necessary action and completed all necessary proceedings for the realization thereof, and the amount realized was insufficient to satisfy the judgment; provided that the person shall state the amount realized and the balance remaining due on the judgment after application of the amount realized; and
 - (5) That where the licensee is a judgment debtor in a bankruptcy proceeding, the aggrieved person has obtained an order from the bankruptcy court declaring the judgment against the licensee to be non-dischargeable.”

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 16. This Act shall take effect upon its approval.
(Approved July 6, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 195

S.B. NO. 1520

A Bill for an Act Relating to Government.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State has never explicitly acknowledged that Native Hawaiians are the only indigenous, aboriginal, maoli population of Hawaii.

Native Hawaiians are the indigenous, native people of the Hawaiian archipelago and are a distinctly native community. From its inception, the State has had a special political and legal relationship with the Native Hawaiian people and has continually enacted legislation for the betterment of their condition.

In section 5(f) of the Admission Act of 1959, Congress created what is commonly known as the ceded lands trust. The ceded lands trust, consisting of lands, including submerged lands, natural resources, and the proceeds from the disposition or use of those lands – purportedly ceded to the United States by the Republic of Hawaii – is for five purposes, one of which remains the betterment of the conditions of native Hawaiians.

At the 1978 Constitutional Convention, the delegates proposed a constitutional amendment to establish the office of Hawaiian affairs. The amendment was ratified by the voters on November 7, 1978, and codified as article XII, sections 5 and 6 of the Hawaii State Constitution, and in chapter 10, Hawaii

Revised Statutes. The State's designation of the office of Hawaiian affairs as a trust vehicle to act on behalf of Native Hawaiians until a Native Hawaiian governing entity could be reestablished reaffirmed the State's obligations to the Native Hawaiian people.

Delegates to the 1978 Constitutional Convention further proposed to amend the Hawaii State Constitution to affirm protection of all "rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 . . ." Moreover, state law also specifically protects Hawaiians' ability to practice their traditional and customary rights. The federal and state courts have continuously recognized the right of the Native Hawaiian people to engage in customary and traditional practices on public lands.

In 1993, the United States formally apologized to Native Hawaiians for the United States' role in the overthrow of the Hawaiian Kingdom through Public Law 103-150 (107 Stat. 1510), commonly known as the "Apology Resolution". The Apology Resolution acknowledges that the illegal overthrow of the Hawaiian Kingdom occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through a Treaty of Annexation or through a plebiscite or referendum. The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Hawaiian Kingdom and to support reconciliation efforts between the United States and Native Hawaiians. Pursuant to the Apology Resolution, the United States Departments of Justice and the Interior conducted reconciliation hearings with the Native Hawaiian people in 1999 and issued a joint report entitled, "From Mauka to Makai: The River of Justice Must Flow Freely", which identified promoting the reorganization of a Native Hawaiian government as a priority recommendation for continuing the process of reconciliation. To further this process of reconciliation, Congress created the Office of Native Hawaiian Relations within the Department of the Interior, to consult with Native Hawaiians on the reconciliation process.

In December 2010, the Departments of Justice and the Interior reaffirmed the federal support for the Native Hawaiian Government Reorganization Act of 2010. This reaffirmation recognized that Native Hawaiians are the only one of the nation's three major indigenous peoples who currently lack a formal government-to-government relationship with the United States.

The United States became a charter member of the United Nations in 1945. The United States submitted Hawaii as a territory of the United States to be listed as a non-self-governing territory entitled to self-government under Article 73, Charter of the United Nations, via United Nations General Assembly Resolution 66 (1946), although it was later de-listed at the time of statehood. Also in December 2010, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples, which acknowledged, among other things:

ARTICLE 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The United States' endorsement of the United Nations Declaration on the Rights of Indigenous Peoples included recognition of its support not only for the Native Hawaiian Government Reorganization Act of 2010 but also many additional laws for Native Hawaiians such as the National Historic Preservation

Act, the Native Hawaiian Education Act, the Native American Housing Assistance and Self-Determination Act, and the Native American Graves Protection and Repatriation Act.

Native Hawaiians have continued to maintain their separate identity as a single, distinctly native political community through cultural, social, and political institutions and have continued to maintain their rights to self-determination, self-governance, and economic self-sufficiency.

The State has supported the reorganization of a Native Hawaiian governing entity. It has supported the Sovereignty Advisory Council, the Hawaiian Sovereignty Advisory Commission, the Hawaiian Sovereignty Elections Council, and Native Hawaiian Vote, and the convening of the Aha Hawai'i 'Oiwī (the Native Hawaiian Convention). The legislature has adopted various resolutions during its regular sessions throughout the 1990s and 2000s. The Governor has testified before Congress regarding the State's support for Native Hawaiians as the indigenous people of Hawaii with the right to self-government. Recognizing the likelihood of a reorganized Native Hawaiian governing entity, the State has also provided for the transfer of the management and control of the island of Kahoolawe and its waters to the sovereign Native Hawaiian entity upon its recognition by the United States and the State of Hawaii.

The purpose of this Act is to recognize Native Hawaiians as the only indigenous, aboriginal, maoli population of Hawaii. It is also the State's desire to support the continuing development of a reorganized Native Hawaiian governing entity and, ultimately, the federal recognition of Native Hawaiians. The legislature urges the office of Hawaiian affairs to continue to support the self-determination process by Native Hawaiians in the formation of their chosen governmental entity.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
NATIVE HAWAIIAN RECOGNITION**

§ -1 **Statement of recognition.** The Native Hawaiian people are hereby recognized as the only indigenous, aboriginal, maoli people of Hawaii.

§ -2 **Purpose.** The purpose of this chapter is to provide for and to implement the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance, including the establishment of, or the amendment to, programs, entities, and other matters pursuant to law that relate, or affect ownership, possession, or use of lands by the Native Hawaiian people, and by further promoting their culture, heritage, entitlements, health, education, and welfare.

§ -3 **Native Hawaiian roll commission.** (a) There is established a five-member Native Hawaiian roll commission within the office of Hawaiian affairs for administrative purposes only. The Native Hawaiian roll commission shall be responsible for:

- (1) Preparing and maintaining a roll of qualified Native Hawaiians; and
- (2) Certifying that the individuals on the roll of qualified Native Hawaiians meet the definition of qualified Native Hawaiians. For purposes of establishing the roll, a “qualified Native Hawaiian” means an individual who the commission determines has satisfied

the following criteria and who makes a written statement certifying that the individual:

- (A) Is:
- (i) An individual who is a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian islands, the area that now constitutes the State of Hawaii; or
 - (ii) An individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act, 1920, or a direct lineal descendant of that individual;
- (B) Has maintained a significant cultural, social, or civic connection to the Native Hawaiian community and wishes to participate in the organization of the Native Hawaiian governing entity; and
- (C) Is eighteen years of age or older.

(b) No later than one hundred eighty days after the effective date of this chapter, the governor shall appoint the members of the Native Hawaiian roll commission from nominations submitted by qualified Native Hawaiians and qualified Native Hawaiian membership organizations. For the purposes of this subsection, a qualified Native Hawaiian membership organization includes an organization that, on the effective date of this Act, has been in existence for at least ten years, and whose purpose has been and is the betterment of the conditions of the Native Hawaiian people.

In selecting the five members from nominations submitted by qualified Native Hawaiians and qualified Native Hawaiian membership organizations, the governor shall appoint the members as follows:

- (1) One member shall reside in the county of Hawaii;
 - (2) One member shall reside in the city and county of Honolulu;
 - (3) One member shall reside in the county of Kauai;
 - (4) One member shall reside in the county of Maui; and
 - (5) One member shall serve at-large.
- (c) A vacancy on the commission shall not affect the powers of the commission and shall be filled in the same manner as the original appointment.
- (d) Members of the commission shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence while away from their homes or regular places of business in the performance of services for the commission.
- (e) The commission, without regard to chapter 76, may appoint and terminate an executive director and other additional personnel as are necessary to enable the commission to perform the duties of the commission.
- (f) The commission may fix the compensation of the executive director and other commission personnel.
- (g) The commission may procure temporary and intermittent services.

§ -4 Notice of qualified Native Hawaiian roll. (a) The commission shall publish notice of the certification of the qualified Native Hawaiian roll, update the roll as necessary, and publish notice of the updated roll of qualified Native Hawaiians.

(b) The publication of the initial and updated rolls shall serve as the basis for the eligibility of qualified Native Hawaiians whose names are listed on the rolls to participate in the organization of the Native Hawaiian governing entity.

§ -5 **Native Hawaiian convention.** The publication of the roll of qualified Native Hawaiians, as provided in section -4, is intended to facilitate the process under which qualified Native Hawaiians may independently commence the organization of a convention of qualified Native Hawaiians, established for the purpose of organizing themselves.

§ -6 **Dissolution of the Native Hawaiian roll commission.** The governor shall dissolve the Native Hawaiian roll commission upon being informed by the Native Hawaiian roll commission that it has published notice of any updated roll of qualified Native Hawaiians, as provided in section -4, and thereby completed its work.

§ -7 **No diminishment of rights or privileges.** Nothing contained in this chapter shall diminish, alter, or amend any existing rights or privileges enjoyed by the Native Hawaiian people that are not inconsistent with this chapter.

§ -8 **Reaffirmation of delegation of federal authority; governmental authority and power; negotiations.** (a) The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled "An Act to Provide for the Admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3), is reaffirmed.

(b) Consistent with the policies of the State of Hawaii, the members of the qualified Native Hawaiian roll, and their descendants, shall be acknowledged by the State of Hawaii as the indigenous, aboriginal, maoli population of Hawaii.

§ -9 **Disclaimer.** Nothing in this chapter is intended to serve as a settlement of any claims against the State of Hawaii, or affect the rights of the Native Hawaiian people under state, federal, or international law."

SECTION 3. The Hawaiian Homes Commission Act, 1920, shall be amended, subject to approval by the United States Congress, if necessary, to accomplish the purposes set forth in this Act in a manner that is expeditious, timely, and consistent with the current needs and requirements of the Native Hawaiian people and the current beneficiaries of the Hawaiian Homes Commission Act, 1920.

SECTION 4. Funding for the Native Hawaiian roll commission shall be provided by the office of Hawaiian affairs.

SECTION 5. The Native Hawaiian roll commission, in cooperation with the office of Hawaiian affairs, shall report to the governor and the legislature no later than twenty days prior to the convening of the regular session of 2012, on the status of the preparation of a roll of qualified Native Hawaiians, expenditures related to the responsibilities of the Native Hawaiian roll commission, and any concerns or recommendations as deemed appropriate by the Native Hawaiian roll commission.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. This Act shall take effect upon its approval.

(Approved July 6, 2011.)

ACT 196

H.B. NO. 519

A Bill for an Act Relating to Workers' Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "employment" to read as follows:

"Employment" means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire, express or implied.

"Employment" does not include:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of the minister's, priest's, or rabbi's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;
- (5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve-month period;
- (6) Domestic, in-home and community-based services for persons with developmental disabilities and mental retardation under the medicaid home and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments;

- (7) Service performed without wages for a corporation without employees by a corporate officer in which the officer is at least a twenty-five per cent stockholder;
- (8) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that no employer shall require an employee to incorporate as a condition of employment; ~~and~~
- (9) Service performed by an individual for another person as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the other person is performed for remuneration solely by way of commission~~[-]~~;
- (10) Service performed by a member of a limited liability company if the member is an individual and has a distributional interest, as defined in section 428-101, of not less than fifty per cent in the company; provided that no employer shall require an employee to form a limited liability company as a condition of employment;
- (11) Service performed by a partner of a partnership, as defined in section 425-101, if the partner is an individual; provided that no employer shall require an employee to become a partner or form a partnership as a condition of employment;
- (12) Service performed by a partner of a limited liability partnership if the partner is an individual and has a transferable interest as described in section 425-127 in the partnership of not less than fifty per cent; provided that no employer shall require an employee to form a limited liability partnership as a condition of employment; and
- (13) Service performed by a sole proprietor.

As used in this ~~paragraph~~ definition, “religious, charitable, educational, or non-profit organization” means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved July 7, 2011.)

ACT 197

H.B. NO. 1566

A Bill for an Act Relating to Small Boat Harbors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The department of land and natural resources, through its division of boating and ocean recreation, operates and manages twenty-one harbors, fifty boat ramps, two thousand one hundred twenty-two moorings and berths, and nineteen piers spread throughout the various counties of the State. The legislature further finds that these ocean recreation facilities are in short supply and in many cases are in dire need of long overdue repair and maintenance. Some facilities are in such disrepair that they cannot be safely used.

One of these facilities, the Ala Wai boat harbor, has been a recent recipient of some badly needed repair and replacement of floating docks; however, the need for further maintenance at Ala Wai and other boat harbors remains unfulfilled. In spite of its needs, the Ala Wai boat harbor includes certain assets within its facilities that are underused and if properly developed could potentially generate revenues that would enable not only its own continued improvement and maintenance but the improvement and maintenance of the rest of the facilities now operated by the division of boating and ocean recreation of the department of land and natural resources.

In these times of economic malaise and with the State facing a massive budget deficit over the next biennium, a further decline in the State's small boat harbors would be a huge loss that the State cannot allow.

The purpose of this Act is to:

- (1) Allow the limited issuance of commercial use permits for vessels with assigned moorings in Ala Wai and Keehi boat harbors;
- (2) Provide for future moorage fees to be established by appraisal by a state-licensed appraiser and assigned a schedule B rate, while existing mooring holders remain in a schedule A class that shall equal schedule B rates over a three-year period; and
- (3) Direct the department of land and natural resources to use the request for proposals process to enter into a public-private partnership for the development of portions of Ala Wai boat harbor facilities that are presently underused to maximize the revenue potential from its facilities.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§200- Ala Wai boat harbor; leases. The fast lands and submerged lands of the Ala Wai boat harbor that may be leased include the following:

- (1) All fast lands and submerged lands described in the request for qualifications or request for proposals issued by the division of boating and ocean recreation of the department on November 25, 2008;
- (2) The fast land described as a portion of tax map key: (1) 2-3-37-12, composed of approximately 112,580 square feet, presently used for harbor offices and permitted vehicular parking; and
- (3) The fast land described as a portion of tax map key: (1) 2-3-37-12, which is a triangular area located Diamond Head of Mole B, presently used for permitted vehicular parking.”

SECTION 3. Section 46-80.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Exemptions.

- (1) Property owned by the state or county governments or entities, may be exempt from the assessment except as provided in paragraph (3);
- (2) Property owned by the federal government or entities, shall be exempt from the assessment except as provided in paragraph (3);
- (3) If a public body owning property, including property held in trust for any beneficiary, which is exempt from an assessment pursuant to paragraphs (1) and (2), grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the assessment, notwithstanding paragraphs (1) and (2), shall be levied on the

leasehold or possessory interest and shall be payable by the lessee;
[and]

- (4) The redevelopment of the Ala Wai boat harbor shall be exempt from the assessment and any special improvement district requirements authorized by subsection (a); and
- (4) (5) No other properties or owners shall be exempt from the assessment unless the properties or owners are expressly exempted in the ordinance establishing a district adopted pursuant to this section or amending the rate or method of assessment of an existing district."

SECTION 4. Section 200-2.5, Hawaii Revised Statutes, is amended to read as follows:

“[§200-2.5] Disposition of state boating facility properties. (a) Notwithstanding any law to the contrary, the board may lease fast lands and submerged lands within an existing state boating facility by public auction, a request for proposals, or by direct negotiation pursuant to section 171-59[.] and chapter 190D, for private development, management, and operation[.]; provided that any lease of fast lands or submerged lands pursuant to a request for proposals shall be subject to section 200- , regardless to which state boating facility the fast or submerged lands are attached.

[For the purpose of] As used in this section, the term “state boating facility” means a state small boat harbor, launching ramp, offshore mooring, pier, wharf, landing, or any other area under the jurisdiction of the department pursuant to this chapter.

(b) The permissible uses under any lease disposed of under this section shall be consistent with the purpose for which the land was set aside by the governor pursuant to section 171-11. Permissible uses may include any use that will complement or support the ocean-recreation or maritime activities of state boating facilities.

(c) Disposition of public lands of state boating facilities constructed, maintained, and operated in accordance with this chapter shall not exceed a maximum term of [fifty-five] sixty-five years.

(d) All revenues due to the State derived from leases of state boating facilities shall be deposited in the boating special fund.

(e) The department shall adopt rules in accordance with chapter 91 to implement this section.”

SECTION 5. Section 200-8, Hawaii Revised Statutes, is amended to read as follows:

“[§200-8] Boating program; payment of costs. The cost of administering a comprehensive statewide boating program, including[.] but not limited to[.] the cost of:

- (1) Operating, maintaining, and managing all boating facilities under the control of the department;
- (2) Improving boating safety;
- (3) Operating a vessel registration and boating casualty investigation and reporting system; and
- (4) Other boating program activities,

shall be paid from the boating special fund[.]; provided that any fees collected within small boat harbors shall be expended only for costs related to the operation, upkeep, maintenance, and improvement of the small boat harbors. The amortization (principal and interest) of the costs of capital improvements for

boating facilities appropriated after July 1, 1975, including[~~5~~] but not limited to[~~5~~] berths, slips, ramps, related accommodations, general navigation channels, breakwaters, aids to navigation, and other harbor structures, may be paid from the boating special fund or from general revenues as the legislature may authorize in each situation. Revenues provided in this chapter for the boating special fund shall be at least sufficient to pay the special fund costs established in this section.”

SECTION 6. Section 200-9, Hawaii Revised Statutes, is amended to read as follows:

“§200-9 Purpose and use of state small boat harbors. (a) State small boat harbors are constructed, maintained, and operated for the purposes of:

- (1) Recreational boating activities;
- (2) Landing of fish; and
- (3) Commercial vessel activities.

For the purpose of this section, “recreational boating activities” means the [~~utilization~~] use of watercraft for sports, hobbies, or pleasure, and “commercial vessel activities” means the [~~utilization~~] use of vessels for activities or services provided on a fee basis. To implement these purposes, only vessels in good material and operating condition that are regularly navigated beyond the confines of the small boat harbor[~~5~~] and [~~which~~] that are used for recreational activities, the landing of fish, or commercial vessel activities shall be permitted to moor, anchor, or berth at [~~such~~] a state small boat harbor or use any of its facilities.

(b) Vessels used for purposes of recreational boating activities [~~which~~] that are also the principal habitation of the owners shall occupy no more than one hundred twenty-nine berths at Ala Wai boat harbor and thirty-five berths at Keehi boat harbor, which is equal to fifteen per cent of the respective total moorage space that was available as of July 1, 1976, at the Ala Wai and Keehi boat harbors. [~~Notwithstanding the purposes of small boat harbors, moorage for commercial vessels and commercial vessel activities is not permitted in the Ala Wai and Keehi boat harbors; provided that commercial catamarans, for which valid permits or registration certificates have been issued by the department which allow the catamarans to operate upon Waikiki shore waters for hire, may be permitted to moor in Ala Wai boat harbor at facilities leased for commercial purposes.~~]

(c) The total number of valid commercial use permits that may be issued for vessels assigned mooring in Ala Wai boat harbor shall not exceed fifteen per cent of the total number of berths and shall not exceed thirty-five per cent of the total number of berths at the Keehi boat harbor; provided that at the Ala Wai boat harbor, vessels issued commercial use permits shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthestmost mauka or adjacent to Holomoana street, with the remainder located throughout the Ala Wai boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and
- (4) Include commercial catamarans, for which valid commercial use permits or existing registration certificates have been issued by the department that allow the catamarans to operate upon Waikiki shore waters for hire.

The department shall allow a sole proprietor of a catamaran operating with a valid commercial use permit or existing registration certificate, issued by the department, for a commercial catamaran to land its commercial catamaran on Waikiki beach ~~and~~, to operate upon Waikiki shore waters for hire, and to transfer the ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate under the commercial use permit or existing registration certificate. The existing commercial use permit or existing registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity. No valid commercial use permit or existing registration certificate issued to an owner of a commercial catamaran operating in the Waikiki area shall be denied or revoked without a prior hearing held in accordance with chapter 91.

~~(e)~~ (d) Notwithstanding any limitations on commercial permits for Maui county small boat facilities, vessels engaging in inter-island ferry service within Maui county shall be afforded preferential consideration for ferry landings, including the issuance of a commercial operating permit and the waiver of any applicable fees, at Maui county small boat facilities; provided that:

- (1) The vessel operator has been issued a certificate of public convenience and necessity for the purpose of engaging in inter-island ferry service that includes a route within Maui county;
- (2) The design and performance characteristics of the vessel will permit safe navigation within the harbor entrance channel and safe docking within Maui county small boat facilities;
- (3) The vessel operations will not result in unreasonable interference with the use of Maui county small boat facilities by other vessels; and
- (4) All preferential consideration and waivers, including any commercial permits issued under this section, shall cease upon the vessel operator's termination of inter-island ferry service within Maui county.

~~(d)~~ (e) The chairperson may adopt rules pursuant to chapter 91 to further implement this section."

SECTION 7. Section 200-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The permittee shall pay moorage fees to the department for the use permit that shall be based on~~;~~ but not limited to~~;~~ the use of the vessel, its effect on the harbor, use of facilities, and the cost of administering this mooring program; and, furthermore:

- (1) ~~[Moorage]~~ Except for commercial maritime activities where there is a tariff established by the department of transportation, moorage fees shall be established by appraisal by a state-licensed appraiser approved by the department and shall be higher for nonresidents~~;~~ than for residents. The moorage fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and may be increased annually by the department, to reflect a cost-of-living index increase; provided that:
 - (A) Schedule A shall include existing mooring permittees; and
 - (B) Schedule B shall apply to all new mooring applicants and transient slips on or after July 1, 2011;provided further that schedule A rates shall be increased by the same amount each year so that schedule A rates equal schedule B rates by July 1, 2014;
- (2) For commercial maritime activities where there is a tariff established by the harbors division of the department of transportation, the de-

- partment may adopt the published tariff of the harbors division of the department of transportation or establish the fee by appraisal by a state-licensed appraiser approved by the department;
- [(2)] (3) An application fee shall be collected when applying for moorage in state small boat harbors and shall thereafter be collected annually when the application is renewed. The application fee shall be:
- (A) Set by the department; and
- (B) Not less than \$100 for nonresidents;
- [(3)] (4) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in addition to the moorage fee, a liveaboard fee that shall be calculated at a rate of:
- (A) \$5.20 a foot of vessel length a month if the permittee is a state resident; and
- (B) \$7.80 a foot of vessel length a month if the permittee is a nonresident;
- provided that the liveaboard fees established by this paragraph may be increased by the department at the rate of the annual cost-of-living index, but not more than five per cent in any one year, beginning ~~[January]~~ July 1 of each year; ~~[and~~
- [(4)] (5) If a vessel is used for commercial purposes from its permitted mooring, the permittee shall pay, in lieu of the moorage and liveaboard fee, a fee based on three per cent of the gross revenues derived from the use of the vessel or two times the moorage fee assessed for a recreational vessel of the same size, whichever is greater~~[-]; and~~
- (6) The department is authorized to assess and collect utility fees, including electrical and water charges, and common-area maintenance fees in small boat harbors.”

SECTION 8. (a) Pursuant to section 200-2.5, Hawaii Revised Statutes, the department of land and natural resources is directed to lease fast lands and submerged lands at the Ala Wai boat harbor using the request for proposals process for the public-private development, management, and operation of areas of Ala Wai boat harbor.

(b) The fast lands and submerged lands of the Ala Wai boat harbor that may be leased include the lands described in section 200- , Hawaii Revised Statutes.

(c) The permissible uses under the lease issued pursuant to subsection (a) shall include:

- (1) A minimum of not less than one hundred twenty berths for vessels; provided that:
- (A) Notwithstanding section 200-9(b), Hawaii Revised Statutes, not more than forty berths shall be available for vessels used for purposes of recreational boating activities that are also the principal habitation of the owners;
- (B) Not more than thirty berths, including those allowed pursuant to section 200-9(c), Hawaii Revised Statutes, shall be available for vessels issued commercial use permits; and
- (C) All berths provided under this paragraph shall be made available to the public pursuant to rules of the department of land and natural resources, with moorage fees to be determined by the developer;
- (2) Office space for use by the division of boating and ocean recreation of the department of land and natural resources;

- (3) Vehicular parking, including parking stalls for use by the division of boating and ocean recreation of the department of land and natural resources and for public metered parking;
 - (4) Commercial uses, including but not limited to restaurants, retail stores, marine-supplies stores, and sundry stores, to be made available to the public;
 - (5) Hotel, residential, and timeshare uses;
 - (6) Training facilities for ocean recreation and support facilities for ocean recreation;
 - (7) Any uses described or referred to in the request for qualifications or request for proposals issued by the division of boating and ocean recreation of the department of land and natural resources on November 25, 2008;
 - (8) Vessel-fueling facilities;
 - (9) Vessel haul-out, storage, and repair facilities; and
 - (10) Deep seawater air-conditioning plants.
- (d) The lease shall not exceed a maximum term of sixty-five years and shall provide for:

- (1) A minimum lease rent that is the greater of a commercially acceptable percentage of the gross receipts of the lessee from the developed leased premises or a fair return on the fair market value of the vacant leased premises, as determined by appraisal by a state-licensed appraiser approved by the department, with reasonable periodic step-ups in the minimum lease rent over the term of the lease; and
 - (2) A three-year development period with a fixed reduced lease rent.
- (e) Notwithstanding chapter 171 and section 190D-33, Hawaii Revised Statutes, all revenues from the lease shall be deposited in the boating special fund.
- (f) Notwithstanding chapters 171 and 190D, Hawaii Revised Statutes, the lease of fast lands and submerged lands of Ala Wai boat harbor shall be subject to section 200-2.5(a), Hawaii Revised Statutes.
- (g) Notwithstanding section 171-53, Hawaii Revised Statutes, the prior authorization of the legislature by concurrent resolution shall not be required for the lease of submerged lands and lands beneath tidal waters at the Ala Wai boat harbor.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2011.

(Approved July 7, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 198

S.B. NO. 181

A Bill for an Act Relating to Photovoltaic-Ready New Residential Homes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. As the cost of photovoltaic systems continues to fall, the installation of residential photovoltaic systems will become increasingly cost-effective. The legislature finds, however, that installation of these systems on ex-

isting structures can be hindered by initial construction design features that limit the physical space available for installation of photovoltaic systems and related equipment. A policy requiring all new single-family residential construction to incorporate design elements and minimal equipment installation to make the structure photovoltaic-ready at the time of initial construction would facilitate the widespread adoption of photovoltaic systems.

Photovoltaic-ready requirements would ensure that new residential construction is designed to reap the maximum benefits of future solar technology installations, thus reducing potential cost-recoupment periods after solar technologies are installed. Widespread adoption of solar technologies on residential buildings would result in reduced energy demand and reduced greenhouse gas emissions.

The purpose of this Act is to establish a working group to study the feasibility of requiring all new single-family residential construction to incorporate design elements and minimal equipment installation to make the structure photovoltaic-ready at the time of initial construction.

SECTION 2. (a) There is established a working group to study the feasibility of requiring all new single-family residential construction to be photovoltaic-ready at the time of initial construction, to be placed within the department of business, economic development, and tourism for administrative purposes.

(b) The working group shall consider strategies for facilitating the widespread adoption of photovoltaic systems including:

- (1) The incorporation of specific design elements in new residential structures to make the structures photovoltaic-ready;
- (2) Minimal retrofitting and equipment installation for future photovoltaic accommodation; and
- (3) Blueprints and labeling that detail photovoltaic system accommodations and connections;
- (4) Identifying areas in the State where the use of photovoltaic systems would be impractical or where other renewable energy resources are more readily available; and

(5) Any other issues the working group considers appropriate.

(c) The working group shall comprise the following members:

- (1) The director of business, economic development, and tourism, or the director's designee;
- (2) The executive director of the state building code council, or the executive director's designee;
- (3) One county building official from each of the counties, to be appointed by the respective mayor;
- (4) A representative from the photovoltaic industry, who shall be appointed by the speaker of the house of representatives;
- (5) A contractor-builder, who shall be appointed by the president of the senate;
- (6) A representative from the Hawaii Association of Realtors;
- (7) A member of the state house of representatives appointed by the speaker of the house of representatives, or the representative's designee;
- (8) A member of the state senate appointed by the president of the senate, or the senator's designee; and
- (9) Any additional members the chairperson of the working group determines to be necessary.

(d) The members of the working group shall designate a chairperson from among its members and shall serve without compensation, but shall be

reimbursed for expenses, including travel expenses, incurred in performance of official duties.

(e) The working group shall report to the legislature its findings and recommendations, including any proposed legislation, no later than twenty days prior to the regular session of 2012.

(f) The working group shall cease to exist on June 30, 2012.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 8, 2011.)

ACT 199

S.B. NO. 1244

A Bill for an Act Relating to Biofuels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the renewable energy facility siting process serves to encourage expeditious permitting and development of renewable energy facilities in Hawaii. The renewable energy facility siting process accomplishes this by coordinating relevant state and county permitting agencies and collecting fees from permit applicants to reimburse state and county agencies for costs related to processing the necessary project permits within twelve months following final acceptance of the document required under chapter 343, Hawaii Revised Statutes. To date, only one project has used the renewable energy facility siting process. However at least four other projects statewide have applied for, or intend to apply for, participation in the renewable energy facility siting process. Many other developers and government agencies have expressed interest in the renewable energy facility siting process.

To help meet the State's clean energy goals, the State's utilities need adequate infrastructure, including interisland transport facilities, to transport, distribute, and store large amounts of biofuels in Hawaii. Facilitating the permitting of the infrastructure will enable the State's utilities to immediately increase their biofuel demand, which in turn should encourage more supply from local biofuel producers.

Currently, only biofuel producers with the capacity to produce one million gallons or more of biofuel annually are eligible for the renewable energy facility siting process. However, consistent with the emerging nature of biofuel technologies, most biofuel projects currently under development in the State are small-scale, pilot projects, some with the capacity to produce only one hundred thousand gallons or more annually. The success of these pilot facilities is critical to Hawaii's clean energy independence as they are a precursor to the demonstration and commercial-scale phases of development.

The inclusion of biofuel production facilities and biofuel distribution infrastructure with the capacity to produce or distribute one hundred thousand gallons or more of biofuel annually will further the State's interest in reducing over-dependence on imported fossil fuels and meeting energy self-sufficiency goals and mandates. It will also encourage the timely development of renewable energy projects that use Hawaii's indigenous renewable energy resources for the health, safety, and welfare of Hawaii's residents.

The purpose of this Act is to expand the applicability of the renewable energy facility siting process to include biofuel production facilities and distribution infrastructure with the capacity to produce or distribute one hundred thousand gallons or more of biofuel annually.

SECTION 2. Section 201N-1, Hawaii Revised Statutes, is amended by amending the definition of “renewable energy facility” or “facility” to read as follows:

““Renewable energy facility” or “facility” means a new facility located in the State with the capacity to produce from renewable energy at least two hundred megawatts of electricity; provided that an electricity production facility with a capability between five megawatts and one hundred ninety-nine megawatts of electricity and a biofuel production facility or distribution infrastructure with a capacity to produce or distribute one [~~million~~] hundred thousand gallons or more annually may apply to the coordinator for designation as a renewable energy facility. The term includes any of the following associated with the initial permitting and construction of the facility:

- (1) The land parcel on which the facility is situated;
- (2) Any renewable energy production structure or equipment;
- (3) Any energy transmission line from the facility to a public utility’s electricity transmission or distribution system;
- (4) Any on-site infrastructure; and
- (5) Any on-site building, structure, other improvement, or equipment necessary for the production of electricity or biofuel from the renewable energy site, transmission of the electricity or biofuel, or any accommodation for employees of the facility.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 8, 2011.)

ACT 200

H.B. NO. 866

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii’s beekeepers are experiencing devastating losses in their industry due to a combination of bad weather and the infestation of varroa mites, nosema spores, and small hive beetles. Unofficial counts indicate that thousands of bee colonies in Hawaii have died off, but the exact numbers remain unknown. Currently, state agricultural officials do not compile statistics on the production of queen bees in Hawaii, in part because the industry is small and also because of issues relating to proprietary information.

The purpose of this Act is to allow beekeepers to register certain information with the department of agriculture, which shall be confidential subject to the limitations on confidentiality imposed under chapter 92F, Hawaii Revised Statutes.

SECTION 2. Chapter 142, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§142- Beekeepers; registration. (a) Beekeepers may register with the department of agriculture, on forms prescribed and prepared by the department, which shall include the following information:

- (1) The name, address, and contact information for the beekeeper; and

(2) Other information that may assist the department in compiling accurate information on Hawaii's beekeeping industry.

(b) The department of agriculture shall keep registration information confidential subject to the limitations on confidentiality imposed under chapter 92F; provided that the name and business address of each registrant shall be made publicly available by the department; and provided further that the department may compile statistics based on the information, pursuant to section 141-1.

(c) The registration shall be effective for a period of one year, and shall be renewed at the end of the one-year period."

SECTION 3. The department of agriculture shall establish an apiary program, which may include the following positions, to carry out the purposes of this Act:

- (1) One apiary specialist;
- (2) One apiary planner; and
- (3) Two apiary technicians.

SECTION 4. The department of agriculture shall report to the legislature no later than twenty days prior to the convening of the regular session of 2013 on the effectiveness of beekeeper registration in keeping accurate statistics on the beekeeping industry, including any proposed legislation or recommendations for amendments to the registration system or process.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved July 8, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 201

H.B. NO. 122

A Bill for an Act Relating to Renewable Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 173, Session Laws of Hawaii 2009 (Act 173), recognized that to develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the project. The purpose of Act 173 was to facilitate the financing and development of renewable energy projects by allowing leases and easements pertaining to renewable energy projects, together with mortgages and other conveyances as security for finance, to be created, enforced, and recorded, without requiring the landowner to obtain formal subdivision approval, and instead requiring approval for exemption from subdivision requirements, from the applicable county or other approving agency.

The need to encourage and facilitate renewable energy facilities in the State persists, but critical sections of Act 173 will be repealed on July 1, 2013, unless the legislature acts.

The purpose of this Act is to extend the repeal date of Act 173 to highlight the State's commitment to encouraging and facilitating renewable energy projects throughout the State and to clarify that wind energy projects qualify for the exemptions.

SECTION 2. Section 201N-13, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

“~~[[§201N-13]]~~ Subdivision exemptions in existence on June 30, ~~[2013;] 2020.~~

(a) Any lease or easement (together with any mortgages or other documents encumbering either) that received a subdivision exemption that is in existence on June 30, ~~[2013;] 2020~~, may continue to be effective and shall continue to enjoy the exemption from subdivision requirements granted under section 201N-14 after that section is repealed on July 1, ~~[2013;] 2020~~; provided that the following restrictions are complied with:

- (1) The terms of the lease or easement shall restrict the use of the leased land or easement area to the development and operation of a renewable energy project; provided that, to comply with section 205-4.6, agricultural uses and activities shall not be restricted on agricultural land; and
- (2) The lease shall have an initial term of at least twenty years.”

2. By amending subsection (e) to read:

“(e) Any material change after June 30, ~~[2013;] 2020~~, regarding the leased land or easement area shall be subject to subdivision requirements; provided that the county agency charged with administering subdivisions (for land within the agricultural state land use district) or the department of land and natural resources (for land within the conservation state land use district) shall deem all subdivision requirements from which the lease or easement was exempt pursuant to the original subdivision exemption to be met and the lease or easement shall continue to be exempt from the requirements. The lease or easement shall only be subject to the additional subdivision requirements, if any, necessitated by the material change.”

SECTION 3. Section 201N-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The exemption from subdivision requirements authorized by this section shall only apply to leases and easements that meet the following requirements and shall be subject to the following limitations:

- (1) The lease or easement shall restrict the use of the leased land or easement area to the development and operation of a renewable energy project; provided that, to comply with section 205-4.6, agricultural uses and activities shall not be restricted on agricultural land;
- (2) The lease shall have an initial term of at least twenty years;
- (3) With respect to leases and easements on lands within an agricultural state land use district, the exemption from subdivision requirements provided by this section shall be for:
 - (A) Solar energy facilities permitted under section 205-2(d)(6), on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E; ~~and~~
 - (B) Wind energy facilities permitted under section 205-2(d)(4) and (8), including the appurtenances associated with the production and transmission of wind-generated energy; and

- ~~[(B)]~~ (C) Any renewable energy facilities approved by the land use commission or county planning commission under chapter 205;
- (4) With respect to leases and easements on lands within a conservation state land use district, the exemption from subdivision requirements provided by this section shall be for:
- (A) Wind energy facilities, including the appurtenances associated with the production and transmission of wind-generated energy; and
- (B) Any renewable energy facilities permitted or approved by the board of land and natural resources under chapter 183C; and
- (5) The county agency charged with administering subdivisions in the county in which the renewable energy project is to be situated or, if the land is in a conservation state land use district, the department of land and natural resources, shall approve the exemption from subdivision requirements within ninety days after the project's developer and the owner of the land on which the renewable energy project is to be situated have submitted the conceptual schematics or preliminary plans and specifications for the renewable energy project to the county agency or the department of land and natural resources, and have provided to such county agency or the department of land and natural resources, as applicable, a certification and agreement that all applicable and appropriate environmental reviews and permitting shall be completed prior to commencement of development of the renewable energy project. If, on the ninety-first day, an exemption has not been approved, it shall be deemed disapproved by the county agency or the department of land and natural resources, whichever is applicable."

SECTION 4. Act 173, Session Laws of Hawaii 2009, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval; provided that sections 2 and 4 of this Act shall be repealed on July 1, ~~[2013.]~~ 2020."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 8, 2011.)

ACT 202

H.B. NO. 1568

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The efficient and secure movement of agricultural commodities—whether imported into the State, exported out of the State, or transported between the islands of the State—is key to the long-term viability of Hawaii's agriculture industry. Inefficiencies in cargo transportation increase the cost of goods and raise the risk of spoilage and loss. Consumers and retailers demand safe food products; farmers and wholesalers follow food-safety guide-

lines and regulations. The transportation of agricultural commodities from producer to consumer cannot be the weak link in the system.

The inspection and proper treatment of incoming and outgoing commodities reduce the probability of the introduction of new pests to Hawaii's agricultural industry and reduce the likelihood of a quarantine on Hawaii's exported goods. In addition, export commodities need to be inspected by the United States Department of Agriculture or state department of agriculture to meet the applicable domestic or foreign quarantine or restriction.

Currently, there are only two pathways for introduced species to arrive in the State: air and sea transportation. Air transportation has been proven to be the highest risk pathway, transporting introduced species, invasive species and pests, various illegal plants and animals, and a higher quantity of non-native pests, which are more likely to become established in our islands. Each year, eighty per cent of the insects intercepted by inspectors are at Hawaii's airports.

The legislature finds that the Federal Aviation Administration is moving toward a sustainable airport concept that implements sustainable principles as part of airport planning, the core principles of which are:

- (1) Protecting the environment;
- (2) Maintaining high and stable levels of economic growth; and
- (3) Social progress that recognizes all stakeholders' needs.

This program makes these issues a core objective of the airport and not a secondary concern.

The purpose of this Act is to initiate and continue the implementation of biosecurity facilities at Hawaii's ports and applicable off-port locations. These facilities would be in accord with section 150A-53(2) and (4), Hawaii Revised Statutes, which directs the department of agriculture to:

- (2) Establish, operate, or participate in operating port-of-entry facilities where multiple government agencies may inspect, quarantine, fumigate, disinfect, destroy, or exclude as appropriate, articles that may harbor pests or exclude articles that are prohibited or restricted without a permit, with the goals of:
 - (A) Performing inspections in an efficient, effective, and expeditious manner for the government agencies involved and for cargo owners, carriers, and importers; and
 - (B) Providing for the proper and safe storage and handling of cargo, especially agricultural and food commodities, awaiting inspection;
- * * *
- (4) Collaborate with relevant government agencies, agricultural commodity importers, and other persons to examine and develop joint integrated systems to better implement the biosecurity program."

SECTION 2. Chapter 261, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§261- Biosecurity, inspection, and cargo support facilities. (a)¹ The department shall coordinate with the department of agriculture to facilitate the inspection, consolidation, deconsolidation, and treatment of imported and exported agriculture and other inspected commodities to meet the needs of each island and to facilitate the safe movement of enplaned and deplaned air cargo through the airports."

SECTION 3. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§266- Biosecurity, inspection, and cargo support facilities. (a) The department of transportation shall provide space at commercial harbors for biosecurity and inspection facilities and to facilitate the safe and efficient movement of maritime cargo through the commercial harbors.

(b) The department and department of agriculture shall plan, design, and construct biosecurity, inspection, consolidation, deconsolidation, and treatment facilities for use by the department of agriculture to enhance the efficient and safe movement of imported and exported marine cargo, to include food safe and food security guidelines and standards.”

SECTION 4. New statutory material is underscored.²

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved July 8, 2011.)

Notes

- 1. No subsection (b).
- 2. Edited pursuant to HRS §23G-16.5.

ACT 203

S.B. NO. 146

A Bill for an Act Relating to Biofuel.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State needs to expand the use of biofuels as a viable source of energy in order to reduce dependence on fossil fuels and imported oil. The use of biofuels is consistent with the State’s goals relating to renewable energy and sustainability. The legislature further finds that imposing a statutory requirement to utilize biofuels as energy may be premature at this time in view of the lack of research and development in the industry, the nascent nature of the industry, and the uncertain availability of biomass crops in Hawaii to produce liquid or gaseous fuel.

The purpose of this Act is to direct the energy resources coordinator to conduct a study and issue a preliminary and a final report on the conditions and policies necessary to expand biofuel production in the State to displace a significant amount of petroleum-based liquid fuel.

SECTION 2. The energy resources coordinator shall conduct a study and issue a report on the potential for biofuel production in Hawaii to displace a significant amount of petroleum-based liquid fuel. In compiling its report, the coordinator shall consult with producers, including local biofuel producers and local refineries; researchers; landowners; distributors; and end users, including airlines, fleets, utilities, and the military, on the conditions and policies necessary for biofuel production and use in Hawaii to displace a significant amount of petroleum-based liquid fuel.

The report shall include information on the following types of biofuel:

- (1) Ethanol;
- (2) Cellulosic ethanol;
- (3) Fatty-acid-methyl-ester biodiesel;
- (4) Synthetic or bio-based:
 - (A) Diesel fuel;

- (B) Gasoline; and
- (C) Jet fuel; and
- (5) Any other type of biofuel the coordinator deems relevant to the study.

SECTION 3. (a) For each type of biofuel listed in section 2 of this Act, the energy resources coordinator's report pursuant to section 2 of this Act shall include the following information:

- (1) The State's projected demand in the near-term, mid-term, and long-term for the biofuel's petroleum-based counterparts;
- (2) Types of feedstock that could be used;
- (3) Availability of feedstock within the State in the near-term, mid-term, and long-term;
- (4) Availability of feedstock out-of-state in the near-term, mid-term, and long-term;
- (5) Production within the State in the near-term, mid-term, and long-term;
- (6) Production out-of-state in the near-term, mid-term, and long-term;
- (7) Costs in the near-term, mid-term, and long-term for biofuel product produced within the State;
- (8) Costs in the near-term, mid-term, and long-term for biofuel product produced out-of-state;
- (9) Status of the technology;
- (10) ASTM specifications;
- (11) Realistic timeline of production within the State;
- (12) Benefits to the State's economy;
- (13) Emissions compared to other comparable biofuels and to its petroleum-based counterpart;
- (14) Logistics of handling and usage compared to other comparable biofuels and to its petroleum-based counterpart; and
- (15) Stability of supply and costs compared to other biofuels and to its petroleum-based counterpart.

For the purposes of this Act:

"Long-term" means longer than ten years.

"Mid-term" means from three to ten years.

"Near-term" means within three years.

(b) The energy resources coordinator's report shall include recommendations, taking into account the federal Renewable Fuel Standards II, as amended, on the following:

- (1) Whether any specific biofuel mandate is necessary in order for biofuel production and use in Hawaii to displace a significant amount of petroleum-based liquid fuel; and
- (2) Whether the ethanol fuel requirement in section 486J-10, Hawaii Revised Statutes, should be maintained, modified, or repealed.

The coordinator shall include the rationale for all recommendations made in the report.

(c) The energy resources coordinator shall issue a preliminary report of findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2012 and a final report of findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2013; provided that the preliminary and final reports may be included in the energy resources coordinator's respective annual reports to the governor and legislature, pursuant to section 196-4(11), Hawaii Revised Statutes.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 8, 2011.)

ACT 204

H.B. NO. 1520

A Bill for an Act Relating to Renewable Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that up-front costs of renewable energy systems and energy efficient devices are a key barrier preventing many Hawaii residents and businesses from purchasing such systems and devices. Further, existing clean energy incentive programs inadequately serve electric utility company customers who are renters and or who lack the resources to invest in renewable energy or energy efficiency. The legislature finds that it is in the public interest to make cost-effective renewable energy and energy efficiency options more accessible to residents and businesses statewide in an equitable way.

The purpose of this Act is to direct the public utilities commission to investigate the viability of an on-bill financing program to allow electric utility company customers to finance purchases of renewable energy systems or energy efficient devices through the energy savings provided by such systems or devices.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to part VII to be appropriately designated and to read as follows:

“§269- On-bill financing for energy efficiency and renewable energy. (a) The public utilities commission shall investigate an on-bill financing program that would allow an electric utility company customer to purchase or otherwise acquire a renewable energy system or energy efficient device, as determined by the public utilities commission, by providing for billing and payment of such a system or device through an assessment on the electric utility company customer's electricity bill.

(b) In investigating an on-bill financing program, the public utilities commission may consider:

- (1) The costs and benefits associated with the establishment and administration of the program;
- (2) The ability of the program to effectively provide lifecycle cost savings to participating electric utility company customers;
- (3) The ability of the program to make renewable energy and energy efficiency more accessible to the rental market and other underserved markets;
- (4) Methods to structure the program to ensure that any public benefits fee funds are spent cost-effectively and in compliance with applicable statutes;
- (5) The use of non-ratepayer funds or private capital to provide financing for renewable energy systems or energy efficient devices acquired through the program;
- (6) Reasonable penalties, which may include fines and disconnection of utility services, for nonpayment of on-bill financing costs;
- (7) The ability of an electric utility company to recover costs incurred due to the program; and

(8) Other issues the public utilities commission deems appropriate.

(c) If on-bill financing is determined by the public utilities commission to be viable, the public utilities commission may implement an on-bill financing program by decision and order or by rules pursuant to chapter 91.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 8, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 205

S.B. NO. 1348

A Bill for an Act Relating to the Hawaii Health Insurance Exchange.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known and may be cited as the “Hawaii Health Insurance Exchange Act.”

SECTION 2. The federal Patient Protection and Affordable Care Act of 2010 provides for the establishment by January 1, 2014, of health insurance exchanges in every state to connect buyers and sellers of health and dental insurance and to facilitate the purchase and sale of federally qualified health insurance plans and qualified dental plans. The intent of the health insurance exchange is to reduce the number of uninsured individuals, provide a transparent marketplace, conduct consumer education, and assist individuals in gaining access to assistance programs, premium assistance tax credits, and cost-share reductions.

The legislature finds that, largely because of the Hawaii Prepaid Health Care Act, chapter 393, Hawaii Revised Statutes, the State already enjoys an overall healthier population, lower uninsured rates, and lower premium costs than mainland states. The Hawaii Prepaid Health Care Act has proven to be successful. It is imperative that Hawaii’s health insurance exchange work in tandem with the Hawaii Prepaid Health Care Act to preserve its existing benefits for the people of the State.

The legislature further finds that the people of Hawaii will be best served by a health insurance exchange that is operated locally in Hawaii. Therefore, this Act provides the framework for a private, nonprofit health exchange that conforms to the requirements of the federal law and is responsive to the unique needs and circumstances of the State.

The legislature notes that the State is already in receipt of a federal grant to plan for the design and implementation of a Hawaii-based health insurance exchange and, pursuant to the Catalog of Federal Domestic Assistance number 93.525, a task force has been convened for this purpose. This Act establishes an interim board of directors to be appointed by the governor upon recommendation of the insurance commissioner. The interim board shall work within the policy framework of this Act to propose legislation to the 2012 legislature implementing a Hawaii health insurance exchange, to be known as the Hawaii health connector, to ensure the State’s compliance with the Patient Protection and Affordable Care Act. Pursuant to recommendations of the task force, the

legislature is committed to providing policy direction and operational guidelines as the State works toward implementing a fully functional health insurance exchange to meet the federally mandated 2014 implementation deadline.

Recently, the United States Department of Health and Human Services issued a request for proposals from states for assistance in establishing state health insurance exchanges. The legislature finds that moving forward now with an enabling statute is the prudent course of action to maximize opportunities to take advantage of forthcoming federal moneys. The framework established by this Act will allow future legislatures to follow the most appropriate course in implementing the health insurance exchange.

SECTION 3. The Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII HEALTH INSURANCE EXCHANGE**

§ -1 Definitions. As used in this article:

“Board” means the board of directors of the Hawaii health connector.

“Commissioner” means the insurance commissioner of the department of commerce and consumer affairs.

“Connector” means the Hawaii health insurance exchange, known as the Hawaii health connector, established by section -2.

“Federal Act” means the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and any amendments to, or regulations or guidance issued under, those Acts.

“Insurer” means any person or entity that issues a policy of accident and health or sickness insurance subject to article 10A of chapter 431, or chapters 432 or 432D.

“Interim board” means the interim board of directors of the Hawaii health connector established under section 4 of Act , Session Laws of Hawaii 2011.

“Qualified dental plan” means a dental benefit plan as described in Section 1311(d)(2)(B)(ii) of the Federal Act.

“Qualified plan” means a health benefit plan offered by an insurer that meets the criteria for certification described in Section 1311(c) of the Federal Act.

“Secretary” means the Secretary of the United States Department of Health and Human Services.

§ -2 Establishment of the Hawaii health insurance exchange; purpose.

(a) There is established the Hawaii health insurance exchange to be known as the Hawaii health connector. The connector shall not be an agency of the State and shall not be subject to laws or rules regulating rulemaking, public employment, or public procurement. The connector shall be a Hawaii nonprofit corporation organized and governed pursuant to chapter 414D, the Hawaii nonprofit corporations act.

(b) The purposes of the connector shall include:

- (1) Facilitating the purchase and sale of qualified plans and qualified dental plans;
- (2) Connecting consumers to the information necessary to make informed health care choices; and

(3) Enabling consumers to purchase coverage and manage health and dental plans electronically.

(c) The connector shall serve as a clearinghouse for information on all qualified plans and qualified dental plans listed or included in the connector.

(d) The connector shall be audited annually by the state auditor who shall submit the results of each annual audit to the commissioner no later than thirty days after the connector receives the results. The connector shall retain all annual audits on file, along with any documents, papers, books, records, and other evidence that is pertinent to its budget and operations for a period of ten years and shall permit the state auditor, the commissioner, the state legislature, or their authorized representatives to have access to, inspect, and make copies of any documents retained pursuant to this subsection.

(e) The board of directors of the connector shall submit an annual report to the legislature that shall include the most recent audit report received pursuant to subsection (d) no later than twenty days prior to the convening of each regular session of the legislature.

(f) The connector shall offer consumer assistance in a culturally and linguistically appropriate manner.

(g) The connector shall make qualified plans and qualified dental plans available to qualified individuals and qualified employers beginning with effective dates on or before January 1, 2014.

§ -3 Funding. The connector may receive contributions, grants, endowments, fees, or gifts in cash or otherwise from public and private sources including corporations, businesses, foundations, governments, individuals, and other sources subject to rules adopted by the board. The State may appropriate moneys to the connector. As required by Section 1311(d)(5)(A) of the Federal Act, the connector shall be self-sustaining by January 1, 2015, and may charge assessments or user fees to participating health and dental carriers, or may otherwise generate funding to support its operations. Moneys received by or under the supervision of the connector shall not be placed into the state treasury and the State shall not administer any moneys of the connector nor be responsible for the financial operations or solvency of the connector.

§ -4 Board of directors; composition; operation. (a) The Hawaii health connector shall be a nonprofit entity governed by a board of directors that shall comprise fifteen members appointed by the governor and with the advice and consent of the senate pursuant to section 26-34; provided that the governor shall submit nominations to the senate for advice and consent no later than February 1, 2012; and provided further that the senate shall timely advise and consent to nominations for terms to begin July 1, 2012. Members of the interim board shall be eligible for appointment to the board.

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders including consumers, employers, insurers, and dental benefit providers. The director of commerce and consumer affairs or the director's designee, the director of health or the director's designee, the director of human services or the director's designee, and the director of labor and industrial relations or the director's designee shall be ex-officio, voting members of the board.

(c) Board members shall serve staggered terms and the interim board shall recommend an appropriate schedule for staggered terms; provided that this subsection shall not apply to ex-officio members, who shall serve during their entire term of office.

(d) The board shall adopt policies prohibiting conflicts of interest and procedures for recusal of a member in the case of an actual or potential conflict of interest, including policies prohibiting a member from taking part in official action on any matter in which the member had any financial involvement or interest prior to the commencement of service on the board. Members of the board may retain private counsel for matters relating to service on the board according to rules recommended by the board.

(e) The board shall manage the budget of the connector according to generally accepted accounting principles and a plan for financial organization adopted by the legislature based on recommendations of the interim board.

(f) The board shall maintain transparency of board actions, including public disclosure and posting of board minutes on the connector's website according to provisions adopted by the legislature based on recommendations of the interim board.

§ -5 Officers and employees of the Hawaii health connector. (a) The board shall appoint officers and employ staff, including an executive director who shall be responsible for the day-to-day operations and management of the exchange, according to a staffing plan that shall be submitted to the legislature. Officers and employees of the board shall not be employees of the State and shall serve at the pleasure of the board.

(b) The board may hire consultants, outside experts, and professional specialists as needed for its efficient operations.

§ -6 Eligibility of insurers and plans. The commissioner shall determine eligibility for the inclusion of insurers and plans; provided that all qualified plans and qualified dental plans that apply for inclusion shall be included in the connector.

§ -7 Eligibility determination for applicants in medicaid adult and children's health insurance program. The department of human services shall be the agency to determine qualifications and eligibility of individuals to participate in medicaid adult or children's health insurance programs. The agency's determination of eligibility shall enable qualified individuals and authorized adults on behalf of qualified children to purchase qualified plans and qualified dental plans from the connector. The department of human services shall verify for the connector individuals and children able to participate in subsidized plans purchased through the connector.

§ -8 Oversight; rate regulation. (a) The commissioner shall retain full regulatory jurisdiction pursuant to the authority granted to the commissioner by part II of article 2 of chapter 431 over all insurers and qualified plans and qualified dental plans included in the connector.

(b) Rate regulation for qualified plans and qualified dental plans included in the connector shall be pursuant to applicable state and federal law.

§ -9 Effect on the prepaid health care act. Nothing in this chapter shall in any manner diminish or limit the consumer protections contained in or alter the provisions of chapter 393.

§ -10 Rules. The board shall adopt rules to implement the provisions of this chapter. Rules adopted pursuant to this section shall not conflict with or prevent the application of regulations promulgated by the Secretary under the Federal Act."

SECTION 4. (a) There shall be an interim board of the Hawaii health connector in the department of commerce and consumer affairs for administrative purposes only that shall recommend to the legislature policies and procedures to further define and operate the Hawaii health connector established under section 3 of this Act. The interim board shall consist of fifteen members who are representative of the stakeholders in the Hawaii health connector and shall include members with expertise in the financial, health care, information technology, organizational management, and nonprofit industries. Members of the interim board shall be designated by the governor based upon recommendations by the insurance commissioner and to the extent possible shall come from the members of the task force established in the department of commerce and consumer affairs pursuant to the Catalog of Federal Domestic Assistance number 93.525 and shall include:

- (1) Three members representing health or dental insurance plans that provide insurance throughout the State;
- (2) One member representing a health care provider group that is located on a neighbor island and that employs a wide range of licensed health care providers including physicians, nurse practitioners, nurses, and physician assistants;
- (3) One representative of a hospital trade association;
- (4) One representative of an organization that represents health care consumers;
- (5) One representative from a labor-management committee organization;
- (6) One representative of a native Hawaiian health care organization;
- (7) One representative of an organization representing federally qualified health care centers;
- (8) One representative of an organization representing businesses or employers;
- (9) One representative of a health information exchange;
- (10) The director of health or the director's designee;
- (11) The director of human services or the director's designee;
- (12) The director of labor and industrial relations or the director's designee; and
- (13) The director of commerce and consumer affairs or the director's designee.

The interim board may form working groups that include members of the interim board and other persons as necessary to assist with the implementation of the Hawaii health connector.

(b) The interim board shall make recommendations to the legislature for:

- (1) A sustainable, fee-based financing mechanism that may incorporate private and public funding for initial start-up costs, but that shall achieve financial self-sustainability by January 1, 2015, as required by federal law;
- (2) Measures to ensure transparency of the Hawaii health connector's finances and for public disclosure of funding sources and expenditures;
- (3) Procedures for the application for inclusion by insurers in the Hawaii health connector; provided that all applicant qualified plans and qualified dental plans as defined in § 430-1, Hawaii Revised Statutes, that are qualified according to the requirements of federal law and regulations and national quality measures shall be included;

- (4) A phased process of including qualified plans and qualified dental plans, which may include initially prioritizing qualified plans that target individuals and small businesses over large group plans;
 - (5) Policies and procedures to ensure continuity of care for consumers transitioning between carriers, including between publicly funded coverage and private qualified plans and qualified dental plans; provided that the interim board shall form a subgroup to make recommendations for the integration of state subsidized plans with the Hawaii health connector to ensure that consumers who move between publicly funded coverage and unsubsidized private coverage are able to maintain continuity of coverage and continuity of care;
 - (6) Measures to increase transparency and opportunities for public participation in determinations of insurer eligibility for inclusion in the Hawaii health connector and the regulation of insurers, qualified plans, and qualified dental plans;
 - (7) Criteria for determining whether a conflict of interest exists for a board member and policies and procedures for avoiding or mitigating conflicts of interest, including when recusal of the board member is appropriate and when a board member shall be entitled to private counsel for a matter relating to the board;
 - (8) A schedule of the terms of board members including provisions for staggering terms to ensure continuity;
 - (9) A staffing plan including organization, duties, wages, and responsibilities of employees of the board of directors of the Hawaii health connector and criteria for hiring contractors, consultants, and outside experts;
 - (10) A plan of financial organization of the board of the Hawaii health connector and requirements for financial management by its board; and
 - (11) Policies for the use of electronic media to publicly disseminate information, increase transparency, and allow members of the public to manage their health and dental plans, including by the online purchase of a qualified plan and qualified dental plan.
- (c) The interim board shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature, no later than twenty days prior to the convening of the 2012 regular session, and shall participate in joint informational sessions upon the request of the legislature.
- (d) At the request of the interim board, the department of commerce and consumer affairs may employ temporary staff not subject to chapter 76, Hawaii Revised Statutes, to assist in carrying out the requirements of this section including:
- (1) A project manager or interim executive director;
 - (2) Information technology professionals to begin construction of the internet-based Hawaii health connector system;
 - (3) A grant writer to pursue additional sources of federal or private funding to assist the operations of the interim board; and
 - (4) Any other staff that the interim board or the commissioner deems necessary to carry out the duties of the interim board.
- (e) The legislative reference bureau shall assist the interim board in preparing its findings, recommendations, and proposed legislation; provided that the chairperson of the interim board shall submit the interim board's proposals to the legislative reference bureau for drafting no later than November 1, 2011, for the report to the 2012 regular session of the legislature.
- (f) The interim board shall cease to exist on June 30, 2012.

SECTION 5. There is appropriated out of federal funds received pursuant to the Catalog of Federal Domestic Assistance number 93.525 the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2011-2012 to support the operations of the interim board of the Hawaii health connector.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act; provided that expenditures under this Act shall not be subject to chapter 103D, Hawaii Revised Statutes.

SECTION 6. This Act shall take effect upon its approval; provided that section 5 of this Act shall take effect on July 1, 2011.

(Approved July 8, 2011.)

ACT 206

S.B. NO. 229

A Bill for an Act Relating to Employment Relations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 378-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Domestic or sexual violence victim” or “victim” means an individual who is the victim of domestic or sexual violence as defined in section 378-71.”

SECTION 2. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

“§378-2 Discriminatory practices made unlawful; offenses defined. (a) It shall be an unlawful discriminatory practice:

- (1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, [ø] arrest and court record[?], or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim’s employer of such status or the employer has actual knowledge of such status:
 - (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
 - (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;
 - (C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination;
 - (D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or
 - (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;

- (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
 - (3) For any person, whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
 - (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;
 - (5) For any employer to refuse to hire or employ or to bar or discharge from employment[;] any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52;
 - (6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
 - (7) For any employer or labor organization to refuse to hire or employ or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because ~~an~~ the employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast; or
 - (8) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's credit history or credit report, unless the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2).
- (b) For purposes of subsection (a)(1):
- (1) An employer may verify that an employee is a victim of domestic or sexual violence by requesting that the employee provide:
 - (A) A signed written statement from a person listed below from whom the employee or the employee's minor child has sought assistance in relation to the domestic or sexual violence:
 - (i) An employee, agent, or volunteer of a victim services organization;
 - (ii) The employee's attorney or advocate;
 - (iii) The attorney or advocate of the employee's minor child;
 - (iv) A medical or other health care professional; or
 - (v) A member of the clergy; or
 - (B) A police or court record supporting the occurrence of the domestic or sexual violence; and
 - (2) An employer may verify an employee's status as a domestic or sexual violence victim not more than once every six months following the date the employer:
 - (A) Was provided notice by the employee of the employee's status as a domestic or sexual violence victim;
 - (B) Has actual knowledge of the employee's status as a domestic or sexual violence victim; or
 - (C) Received verification that the employee is a domestic or sexual violence victim;

provided that where the employee provides verification in the form

of a protective order related to the domestic or sexual violence with an expiration date, the employer may not request any further form of verification of the employee's status as a domestic or sexual violence victim until the date of the expiration or any extensions of the protective order, whichever is later."

SECTION 3. Chapter 378, Hawaii Revised Statutes, is amended as follows:

1. By amending the title of part VI to read:

"[PART VI.] VICTIMS [LEAVE] PROTECTIONS"

2. By designating section 378-71, as a new subpart and inserting a title before section 378-71 to read:

" . GENERAL PROVISIONS"

3. By designating sections 378-72 to 378-74 as a new subpart and inserting a title before section 378-72 to read:

" . VICTIMS LEAVE"

4. Adding a new subpart to read as follows:

" . REASONABLE ACCOMMODATIONS IN THE WORKPLACE

§378- Reasonable accommodations.² An employer shall make reasonable accommodations in the workplace for an employee who is a victim of domestic or sexual violence, including:

- (1) Changing the contact information, such as telephone numbers, fax numbers, or electronic-mail addresses, of the employee;
- (2) Screening the telephone calls of the employee;
- (3) Restructuring the job functions of the employee;
- (4) Changing the work location of the employee;
- (5) Installing locks and other security devices; and
- (6) Allowing the employee to work flexible hours;

provided that an employer shall not be required to make the reasonable accommodations if they cause undue hardship on the work operations of the employer.

(b) Prior to making the reasonable accommodations under this section, an employer may verify that an employee is a victim of domestic or sexual violence as provided in section 378-2(b).

(c) As used in this section, "undue hardship" means an action requiring significant difficulty or expense on the operation of an employer, when considered in light of the following factors:

- (1) The nature and cost of the reasonable accommodation needed under this section;
- (2) The overall financial resources of the employer; the number of employees of the employer; and the number, type, and placement of the work locations of an employer; and
- (3) The type of operation of the employer, including the composition, structure, and functions of the workforce of the employer, the geographic separateness of the victim's work location from the employer, and the administrative or fiscal relationship of the work location to the employer.

§378- Civil actions. Any employee denied reasonable accommodations by an employer in violation of this subpart may file a civil action against the employer to enforce this subpart and recover costs, including reasonable attorney's fees, incurred in the civil action."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 5. This Act shall take effect on January 1, 2012.

(Approved July 8, 2011.)

Notes

1. Definition should be underscored.
2. No (a).
3. Edited pursuant to HRS §23G-16.5.

ACT 207

H.B. NO. 331

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:

- (1) Modify or eliminate any of the restrictions specified in subsection (a);
- (2) Extend or modify the fixed rental period of the lease; provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years; or
- (3) Extend the term of the lease,

to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the board or an independent appraiser; provided that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than ~~fifty-five~~ sixty-five years;
- (3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening;
- (4) Any federal or private lending institution shall be qualified to do business in the State;
- (5) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;

- (6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled; and
- (7) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 8, 2011.)

ACT 208

H.B. NO. 227

A Bill for an Act Relating to Trespass.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of “enter or remain unlawfully” to read as follows:

““Enter or remain unlawfully[.]” A person “enters or remains unlawfully” means to enter or remain in or upon premises when the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of the person’s intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. [A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to the person by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.]”

SECTION 2. Section 708-814, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of criminal trespass in the second degree if:

- (a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced;
- (b) The person enters or remains unlawfully in or upon commercial premises after a reasonable warning or request to leave by the owner or lessee of the commercial premises, the owner’s or lessee’s authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.

For the purposes of this paragraph, “reasonable warning or request” means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident

occurred, which may contain but is not limited to the following information:

- (i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to section 708-814(1)(b), and that criminal trespass in the second degree is a petty misdemeanor;
 - (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description, including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned;
 - (iii) The name of the person giving the warning along with the date and time the warning was given; and
 - (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator; [øf]
- (c) The person enters or remains unlawfully on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the agricultural lands:
- (i) Are fenced, enclosed, or secured in a manner designed to exclude intruders;
 - (ii) Have a sign or signs displayed on the unenclosed cultivated or uncultivated agricultural land sufficient to give notice and reading as follows: "Private Property". The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line; or
 - (iii) At the time of entry, are fallow or have a visible presence of livestock or a crop:
 - (A) Under cultivation;
 - (B) In the process of being harvested; or
 - (C) That has been harvested[-]; or
- (d) The person enters or remains unlawfully on unimproved or unused lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the lands:
- (i) Are fenced, enclosed, or secured in a manner designed to exclude the general public; or
 - (ii) Have a sign or signs displayed on the unenclosed, unimproved, or unused land sufficient to give reasonable notice and reads as follows: "Private Property – No Trespassing", "Government Property – No Trespassing", or a substantially similar message; provided that the sign or signs shall contain letters not less than two inches in height and shall be placed at reasonable intervals along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line.

For the purposes of this paragraph, "unimproved or unused lands" means any land upon which there is no improvement; construction of any structure, building, or facility; or alteration of the land by grading, dredging, or mining

that would cause a permanent change in the land or that would change the basic natural condition of the land. Land remains “unimproved or unused land” under this paragraph notwithstanding minor improvements, including the installation or maintenance of utility poles, signage, and irrigation facilities or systems; minor alterations undertaken for the preservation or prudent management of the unimproved or unused land, including the installation or maintenance of fences, trails, or pathways; maintenance activities, including forest plantings and the removal of weeds, brush, rocks, boulders, or trees; and the removal or securing of rocks or boulders undertaken to reduce risk to downslope properties.”

SECTION 3. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§663- Trespass; limited liability of agricultural land owner. (a) An owner of agricultural land shall not be liable for any injury, death, loss, or damage suffered by a trespasser on the owner’s agricultural land, unless the injury, death, loss, or damage was:

- (1) Intentionally inflicted upon the trespasser by the owner of the land;
or
- (2) Caused by the gross negligence of the owner of the land.

(b) For purposes of this section, unless the context otherwise requires: “Agricultural land” means any land in excess of four acres used primarily for a farming operation, as defined in section 165-2; provided that the term shall include land used for farm buildings and dwellings and roads and irrigation infrastructure associated with the agricultural land.

“Fallow” means land associated with agricultural production that is left unseeded or unplanted for one or more growing seasons.

“Owner” means the possessor of a fee interest, a tenant, lessee, occupant, or person, group, club, partnership, family, organization, entity, or corporation that is in control, possession, or use of the land, and their members, agents, partners, representatives, shareholders, and employees.

“Trespasser” means a person who enters or remains unlawfully on the agricultural land without the permission of the owner, and the lands:

- (1) Are fenced, enclosed, secured in a manner designed to exclude the general public, or marked by a structure or barrier, including a cattle grid, cattle grate, or other obstacle used to secure livestock;
- (2) Have a sign or signs displayed on the land that are sufficient to give reasonable notice and that read as follows: “No Trespassing” or a substantially similar message; provided that the sign or signs shall consist of letters not less than two inches in height and shall be placed at reasonable intervals along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line; or
- (3) At the time of entry, are fallow or have a visible presence or evidence of livestock-raising, such as cattle, horses, water troughs, shelters, or paddocks, or a crop:
 - (A) Under cultivation;
 - (B) In the process of being harvested; or
 - (C) That has been harvested.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved July 8, 2011.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 209

S.B. NO. 298

A Bill for an Act Relating to Business Regulation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
SUSTAINABLE BUSINESS CORPORATIONS**

§ -1 **Purpose and findings.** This chapter authorizes a designation and code of conduct for a business corporation to offer entrepreneurs and investors the option to build and invest in businesses that operate in a socially and environmentally sustainable manner. Enforcement of those responsibilities comes not from governmental oversight, but rather from new provisions on transparency and accountability included in this chapter.

§ -2 **Definitions.** As used in this chapter:

“Benefit director” means the director designated as the benefit director of a sustainable business corporation under section -7.

“Benefit officer” means the individual designated as the benefit officer of a sustainable business corporation under section -9.

“General public benefit” means a material positive impact on society and the environment, taken as a whole and as measured by a third-party standard under section -12, from the business and operations of a sustainable business corporation.

“Independent” means having no material relationship with a sustainable business corporation or any of its subsidiaries.

“Material owner” means a shareholder who holds either beneficially or of record five per cent or more of the outstanding shares of a sustainable business corporation.

“Material relationship” means a relationship between a person and a sustainable business corporation where:

- (1) The person is, or has been within the last three years, an employee other than a benefit officer of the sustainable business corporation or any of its subsidiaries;
- (2) The person is related by blood, marriage, or adoption to; is a party to a civil union with; is a reciprocal beneficiary or household mem-

ber of; or resides with an officer other than a benefit officer or director of the sustainable business corporation or any of its subsidiaries; or

- (3) The person or an association of which the person is a director, officer, or manager or in which the person owns beneficially or of record five per cent or more of the outstanding equity interests or the outstanding shares of the sustainable business corporation; provided that percentage ownership in an association shall be calculated as if all outstanding rights to acquire equity interests in the association had been exercised.

“Minimum status vote” means that in addition to any other approval or vote required by this chapter or the bylaws adopted by the shareholders:

- (1) The holders of shares of every class or series shall be entitled to vote on the corporate action regardless of any limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series; and
- (2) The corporate action shall be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast thereon.

“Subsidiary” of a person means an association in which the person owns beneficially or of record fifty per cent or more of the outstanding equity interests; provided that a percentage of ownership in an association shall be calculated as if all outstanding rights to acquire equity interests in the association had been exercised.

“Sustainable business corporation” means a domestic corporation, incorporated under chapter 414, that has elected to also become subject to this chapter and whose status as a sustainable business corporation has not been terminated as provided in this chapter.

“Third-party standard” means a standard for defining, reporting, and assessing overall corporate social and environmental performance that conforms to the requirements of this chapter.

§ -3 Election of a domestic corporation to become a sustainable business corporation. (a) A domestic corporation incorporated under chapter 414 may elect to become a sustainable business corporation under this chapter by including in its articles or amending its articles to include a statement that the corporation is a sustainable business corporation. An amendment pursuant to this subsection shall not be effective unless it is adopted by at least the minimum status vote.

(b) If a corporation that is not a sustainable business corporation is a party to a merger, consolidation, or division, or is the exchanging corporation in a share exchange, and the surviving, new, or any resulting corporation in the merger, consolidation, division, or share exchange is to be a sustainable business corporation, then the plan of merger, consolidation, division, or share exchange shall not be effective unless it is adopted by the corporation by at least the minimum status vote.

§ -4 Termination of sustainable business corporation status. (a) A sustainable business corporation may terminate its status as such and cease to be subject to this chapter by amending its articles to delete the statement that the corporation is a sustainable business corporation. An amendment pursuant to this subsection shall not be effective unless it is adopted by at least the minimum status vote.

(b) If a plan of merger, consolidation, division, or share exchange would have the effect of terminating the status of a business corporation as a sustainable business corporation, the plan shall not be effective unless it is adopted by at least the minimum status vote.

§ -5 Corporate purposes. (a) Every sustainable business corporation shall have among its purposes the creation of a general public benefit.

(b) In addition to the general public benefit purpose required by subsection (a), the articles of a sustainable business corporation may identify one or more specific public benefits for which the sustainable business corporation was created. The identification of a specific public benefit under this subsection shall not limit the obligation of a sustainable business corporation to create a general public benefit. Allowable specific public benefits for sustainable business corporations subject to this chapter include:

- (1) Providing low-income or underserved individuals or communities with beneficial products or services;
- (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (3) Preserving the environment;
- (4) Improving human health;
- (5) Promoting the arts, sciences, or advancement of knowledge;
- (6) Increasing the flow of capital to entities with a public benefit purpose;
- (7) Accomplishing any other particular benefit for society or the environment; and
- (8) Using the right to exclude, conferred by any and all patents in which the sustainable business corporation has an interest in this right through assignment, license, lien, security agreement, or obligation for the following purposes:
 - (A) Creating and retaining good jobs within the State as well as throughout the United States;
 - (B) Upholding fair labor standards nationally and internationally; provided that for purposes of this paragraph, "fair labor standards" shall be construed to prohibit child labor, forced or compulsory labor, discrimination in employment, restrictions on freedom of association, and denial of the right to collective bargaining; and
 - (C) Enhancing environmental protection nationally and internationally; provided that if the public benefit under this paragraph relating to the use of patents is specified, section -4 shall not apply to the corporation and the sustainable business corporation status shall be permanent, and this specific public benefit shall not be deleted from the articles of the corporation pursuant to subsection (d), unless the annual statement of the benefit director concludes that the sustainable business corporation has failed to pursue this specific public benefit, then the corporation shall have its status as a sustainable business corporation terminated.

(c) The creation of general and specific public benefits as provided in subsections (a) and (b) shall be in the best interests of the sustainable business corporation.

(d) A sustainable business corporation may amend its articles to add, amend, or delete the identification of a specific public benefit for which the sustainable business corporation was created. An amendment pursuant to this sub-

section shall not be effective unless it is adopted by at least the minimum status vote.

§ -6 Standard of conduct for directors. (a) In discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a sustainable business corporation, in considering the best interests of the sustainable business corporation:

- (1) Shall consider the effects of any action of the sustainable business corporation upon:
 - (A) The shareholders of the sustainable business corporation; and
 - (B) The accomplishment of general and specific public benefits set forth in the sustainable business corporation's purposes; and
- (2) May consider:
 - (A) The employees and workforce of the sustainable business corporation and its subsidiaries and suppliers;
 - (B) The interests of customers as beneficiaries of the general or specific public benefit purposes of the sustainable business corporation;
 - (C) Community and societal considerations, including those of any community in which offices or facilities of the sustainable business corporation or its subsidiaries or suppliers are located;
 - (D) The local and global environment;
 - (E) The short-term and long-term interests of the sustainable business corporation, including benefits that may accrue to the sustainable business corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the sustainable business corporation;
 - (F) The ability of the sustainable business corporation to accomplish its general public benefit purpose and any specific public benefit purpose;
 - (G) The resources, intent, and conduct of any person seeking to acquire control of the corporation; and
 - (H) Any other pertinent factors or the interests of any other group that they deem appropriate.

(b) A director shall not be personally liable for monetary damages for any action taken as a director if the director performed the duties of the director's office in compliance with the general standards of conduct pursuant to section 414-221.

§ -7 Benefit director. (a) The board of directors of a sustainable business corporation shall include one director who shall be designated the "benefit director" and who shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the sustainable business corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director shall be elected pursuant to sections 414-193 and 414-194 and may be removed in the manner provided by sections 414-198 and 414-199. The benefit director may serve concurrently as the benefit officer. The articles or bylaws of a sustainable business corporation may prescribe additional qualifications of the benefit director; provided that the qualifications are consistent with this subsection.

(c) The benefit director shall prepare, and the sustainable business corporation shall include in the annual benefit report to shareholders required by section -11, a statement whether, in the opinion of the benefit director, the sustainable business corporation acted in accordance with its general, and any spe-

cific, public benefit purpose in all material respects during the period covered by the report and whether the directors and officers complied with sections -6(a) and -8(a), respectively. If in the opinion of the benefit director the sustainable business corporation or its directors or officers failed to act according to the requirements of this chapter, then the statement of the benefit director shall include a description of the ways in which the sustainable business corporation or its directors or officers failed to act according to the requirements of this chapter. The benefit director's statement included in the final draft of the benefit report shall include formal responses to all questions, concerns, comments, and suggestions raised through the public comment period required by section -11.

(d) A benefit director shall be independent of and shall have no material relationship with the sustainable business corporation.

§ -8 Standard of conduct for officers. (a) Each officer of a sustainable business corporation shall consider the interests and factors described in section -6(a) in the manner provided in that section when:

- (1) The officer has discretion to act with respect to a matter; and
- (2) It reasonably appears to the officer that the matter may have a material effect on:
 - (A) The creation of a general or specific public benefit by the sustainable business corporation; or
 - (B) Any of the interests or factors referred to in section -6(a).

(b) An officer shall not be personally liable for monetary damages for any action taken as an officer if the officer performed the duties of the position in compliance with the general standards of conduct pursuant to section 414-233.

§ -9 Benefit officer. (a) A sustainable business corporation may have an officer designated as the benefit officer who shall have the authority and shall perform the duties in the management of the sustainable business corporation relating to the purpose of the corporation to create general or specific public benefit as may be provided by or pursuant to the bylaws or, in the absence of controlling provisions in the bylaws, as may be determined by or pursuant to resolutions or orders of the board of directors. If a sustainable business corporation has a benefit officer, the duties of the benefit officer shall include preparing the benefit report required by section -11.

(b) A benefit officer shall be independent of and shall have no material relationship with the sustainable business corporation.

§ -10 Right of action. The shareholders and directors of a sustainable business corporation shall have the right to bring direct or derivative claims to enforce corporate purposes and the standards for directors as set forth in section 414-221(a) and shall have the right to bring direct or derivative claims to enforce the general or specific public benefit purposes of the sustainable business corporation and the standard of conduct for directors pursuant to section -6(a)(1).

§ -11 Annual benefit report. (a) A sustainable business corporation shall deliver to each shareholder an annual benefit report including:

- (1) A narrative description of:
 - (A) The ways in which the sustainable business corporation pursued general public benefits during the year and the extent to which general public benefit was created;
 - (B) The ways in which the sustainable business corporation pursued any specific public benefit that the articles state as a pur-

pose of the sustainable business corporation and the extent to which that specific public benefit was created; and

- (C) Any circumstances that have hindered the creation by the sustainable business corporation of general or specific public benefits;
- (2) An assessment of the overall social and environmental performance of the sustainable business corporation, prepared in accordance with a third-party standard under section -12 applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;
 - (3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;
 - (4) The compensation paid by the sustainable business corporation during the year to each director in the person's capacity as director;
 - (5) The name of each person who owns five per cent or more of the outstanding shares of the sustainable business corporation either beneficially to the extent known to the sustainable business corporation or of record;
 - (6) The statement of the benefit director described in section -7(c);
 - (7) A statement of any connection to the organization that developed the third-party standard under section -12, or its directors, officers, or material owners from the sustainable business corporation, or its directors, officers, and material owners, including any financial or governance relationship that might materially affect the credibility of the objective assessment of the third-party standard; and
 - (8) A statement that, as a private corporation under the direction of its board and accountable to its shareholders and the articles and bylaws of the sustainable business corporation, including those governing the general or specific public benefit purpose and the activities of the sustainable business corporation, the sustainable business corporation and its activities are subject to the oversight of the board of the sustainable business corporation and are not subject to the direct oversight, regulation, or endorsement of any governmental body.
- (b) A sustainable business corporation shall post a draft of its benefit report on the public section of its website, or make it otherwise available to the public, for a sixty-day public comment period prior to final publication of the benefit report. The deadline for a commentary shall be published in a publicly accessible manner.
- (c) The benefit report shall be sent annually to each shareholder within one hundred twenty days following the end of the fiscal year of the sustainable business corporation.
- (d) A sustainable business corporation shall post its most recent benefit report on the public portion of its website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted. If a sustainable business corporation does not have a public website, it shall deliver a copy of its most recent benefit report upon request and without charge to any person who requests a copy.

§ -12 **Third-party standard.** A third-party standard for purposes of defining, reporting, and assessing overall corporate social and environmental performance of a sustainable business corporation subject to this chapter shall be:

- (1) Comprehensive in its assessment of the effect of the business and its operations upon the interests listed in section -6(a);
- (2) Developed by an organization that is independent of the sustainable business corporation; and
- (3) Transparent because the following information is publicly available:
 - (A) The criteria considered when measuring the overall social and environmental performance of a business, as well as the relative weightings of those criteria;
 - (B) The identity of the directors, officers, any material owners, and the governing body of the organization that developed and controls revisions to the standard;
 - (C) The process by which revisions to the standard are made;
 - (D) The process by which changes to the membership of the governing body of the organization that developed and controls revisions to the standard are made; and
 - (E) An accounting of the sources of financial support for the organization that developed and controls revisions to the standard, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

§ -13 **Ministerial role of department director.** Section 414-16 shall apply to any filings made by a sustainable business corporation.”

SECTION 2. This Act shall take effect upon its approval.

(Approved July 8, 2011.)

ACT 210

H.B. NO. 389

A Bill for an Act Relating to Land Use.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is an area in the Heeia ahupua'a, which is located in Koolaupoko, Oahu, in close proximity to the Heeia fishpond that is commonly known as the "Heeia wetlands". The Heeia wetlands, consisting of approximately four hundred five acres, were acquired by the Hawaii community development authority on July 2, 1991, by assuming the buyer's position in an existing purchase agreement and folding it into an exchange agreement with Kamehameha Schools. This transaction provided Kamehameha Schools with what is now the makai gateway park and the parcel of land commonly known as the "Honolulu Ford parcel" in addition to \$11,667,917 in public facility credits in exchange for the Heeia wetlands.

Approximately eighty acres adjacent to the Heeia wetlands were added into the acquisition and subsequently reconveyed to Kamehameha Schools in 1994, in accordance with the terms of the original exchange agreement, when the Hawaii housing finance and development corporation declined to use it for the development of affordable housing. This eighty-acre parcel is not included in the new Heeia community development district. Kakoo Oihi, a Hawaii non-

profit corporation, approached the Hawaii community development authority to request a long-term lease to restore the wetlands, eliminate invasive species, and establish an agricultural and educational center that will contribute to the community at large. A thirty-eight year lease was granted to Kakoo Oihi in March 2010 for these purposes.

The purpose of this Act is to establish the Heeiea community development district to develop culturally appropriate agriculture, education, and natural-resource restoration and management of the Heeiea wetlands.

SECTION 2. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . HEEIEA COMMUNITY DEVELOPMENT DISTRICT

§206E- Definitions. As used in this part:

“District” means the Heeiea community development district.

“Fund” means the Heeiea community development revolving fund.

§206E- District established; boundaries. (a) The Heeiea community development district is hereby established. The district shall include that area within the boundaries described as follows: the southern boundary begins at the southern property line of tax map key number (1) 4-6-16:001 and runs west to Kahekili highway and east to Kamehameha highway. The northern boundary begins at the northern property line of tax map key number (1) 4-6-16:001 and runs west to Kahekili highway and east to Kamehameha highway. The tax map key numbers are (1) 4-6-16:001 and (1) 4-6-16:002 (owned by the authority), and (1) 4-6-16:004, :011, :012, and :017 (owned by various owners of kuleana parcels).

(b) The authority shall serve as the local redevelopment authority of the district to facilitate culturally appropriate agriculture, education, and natural-resource restoration and management of the Heeiea wetlands, in alignment with the Honolulu board of water supply’s most current “Koolau Poko Watershed Management Plan” and the city and county of Honolulu’s most current “Koolaupoko Sustainable Communities Plan”. In addition to any other of its duties under this chapter, the authority shall:

- (1) Consult with the following persons and entities:
 - (A) Recorded landowners in the district;
 - (B) Recorded landowners in section 6 of zone 4 of the first tax map key division;
 - (C) Koolaupoko Hawaiian Civic Club;
 - (D) Kailua neighborhood board;
 - (E) Kahaluu neighborhood board; and
 - (F) Kaneohe neighborhood board,
 to implement activities related to and supportive of cultural practices, agriculture, education, and natural-resource restoration and management;
- (2) Assist land users to manage their properties and implement activities related to and supportive of cultural practices, agriculture, education, and natural-resource restoration and management;
- (3) Work with federal, state, county, and other agencies to ensure that infrastructural support is provided for the district;
- (4) Develop the infrastructure necessary to support the implementation of the Heeiea community development district master plan; and

- (5) Provide, to the extent feasible, maximum opportunity for the restoration and implementation of sustainable, culturally appropriate, biologically responsible, or agriculturally beneficial enterprises.
- (c) Three additional voting members shall, except as otherwise provided in this subsection, be appointed to the authority by the governor pursuant to section 26-34 to represent the district. These three members shall be considered in determining quorum and majority only on issues relating to the district and may vote only on issues related to the district. The three members shall be residents of the district or the Koolaupoko district which consists of sections 1 through 9 of zone 4 of the first tax map key division.

§206E- Heeia community development district; policies to guide development. The following general policies to guide development shall govern the authority's actions in the district:

- (1) Development shall be in accordance with the Heeia master plan, except as it conflicts with the Hawaii State Constitution and the Hawaii Revised Statutes;
- (2) With the approval of the governor, and in accordance with law, the authority, upon the concurrence of a majority of its voting members, may modify and make changes to the Heeia master plan to respond to changing conditions; provided that prior to amending the Heeia master plan, the authority shall conduct a public meeting pursuant to chapter 92 to inform the public of the proposed changes and receive public input;
- (3) The authority shall provide, to the extent feasible, maximum opportunity for the restoration and implementation of sustainable, culturally appropriate, biologically responsible, or agriculturally beneficial enterprises;
- (4) The authority may engage in planning, design, and construction activities within and outside the district; provided that activities outside the district shall relate to infrastructural development, area-wide drainage improvements and sediment transport mitigation, roadway realignments and improvements, and other activities the authority deems necessary to carry out redevelopment of the district and implement this part. Studies or coordinating activities may be undertaken by the authority in conjunction with the county and appropriate federal and state agencies and may address infrastructural systems, natural-resource systems, and other activities;
- (5) Planning, replanning, rehabilitation, development, redevelopment, and other preparations for the restoration of cultural practices, education, natural resources, and agriculture related activities shall be pursued;
- (6) Hawaiian archaeological, historic, and cultural sites shall be preserved and protected to the extent feasible while allowing for continued use of the property for cultural activities, education, agricultural and economic pursuits, and natural-resource restoration;
- (7) Endangered species of flora and fauna shall be preserved and protected to the extent feasible;
- (8) Land use and redevelopment activities within the district shall be coordinated with and, to the extent possible, complement existing county and state policies, plans, and programs affecting the district;
- (9) Public facilities within the district shall be planned, located, and developed to support the redevelopment policies established by this

- part for the district, the master plan approved by the governor, and rules adopted pursuant to this chapter; and
- (10) Special management area permit administration for the district shall continue to be under the authority of the city and county of Honolulu.

§206E- Heeia community development revolving fund. (a) There is established in the state treasury the Heeia community development revolving fund, into which shall be deposited:

- (1) All revenues, income, and receipts of the authority for the district, notwithstanding any other law to the contrary, including section 206E-16;
 - (2) Moneys directed, allocated, or disbursed to the district from government agencies or private individuals or organizations, including grants, gifts, awards, donations, and assessments of landowners for costs to administer and operate the district; and
 - (3) Moneys appropriated to the fund by the legislature.
- (b) Moneys in the fund shall be used only for the purposes of this part.
- (c) Investment earnings credited to the assets of the fund shall become part of the fund.

§206E- Rules; adoption. The authority shall adopt rules in accordance with chapter 91 to carry out the purposes of this part.”

SECTION 3. This Act shall take effect upon its approval.

(Approved July 8, 2011.)

ACT 211

H.B. NO. 985

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the current procurement process for design-build contracts requires offerors to prepare, in most instances, conceptual design drawings as part of their proposals. This requires a considerable initial investment and may prevent many local firms from submitting proposals for design-build contracts. As a result, purchasing agencies may experience a decrease in competition and an increase in prices, and may potentially be forced to sacrifice design and construction creativity.

The purpose of this Act is to provide for the selection of the most qualified offerors for design-build contracts and to encourage the participation of Hawaii-based companies, including local small firms, in the design-build contract proposal process.

SECTION 2. Section 103D-104, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Design-build” means a project delivery method in which the procurement officer enters into a single contract for design and construction.”

SECTION 3. Section 103D-303, Hawaii Revised Statutes, is amended to read as follows:

“§103D-303 Competitive sealed proposals. (a) Competitive sealed proposals may be ~~[utilized]~~ used to procure goods, services, or construction ~~[designated in rules adopted by the procurement policy board as goods, services, or construction which are]~~ that are either not practicable or not advantageous to the State to procure by competitive sealed bidding. ~~[Competitive sealed proposals may also be utilized when the head of a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State.]~~

(b) Proposals shall be solicited through a request for proposals.

(c) Notice of the request for proposals shall be given in the same manner as provided in section 103D-302(c).

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of ~~[negotiation.]~~ evaluation. A register of proposals shall be prepared ~~[in accordance with rules adopted by the policy board]~~ and shall be open for public inspection after contract award.

(e) The request for proposals shall state the relative importance of price and other evaluation factors.

(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably ~~[susceptible of being]~~ likely to be selected for a contract award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(h) In cases of awards made under this section, ~~[nonselected]~~ non-selected offerors may submit a written request for debriefing to the ~~[chief]~~ procurement officer ~~[or designee]~~ within three working days after the posting of the award of the contract. Thereafter, the ~~[head of the purchasing agency]~~ procurement officer shall provide the ~~[requester]~~ non-selected offeror a prompt debriefing ~~[in accordance with rules adopted by the policy board]~~. Any protest by the ~~[requester]~~ non-selected offeror pursuant to section 103D-701 following debriefing shall be filed in writing with the ~~[chief]~~ procurement officer ~~[or designee]~~ within five working days after the date ~~[that]~~ upon which the debriefing is completed.

(i) In addition to any other provisions of this section, construction projects may be solicited through a request for proposals to use the design-build method; provided that:

(1) A request for proposals is issued to prequalify offerors to select a short list of no more than three responsible offerors, prior to the submittal of proposals; provided that the number of offerors to be selected for the short list shall be stated in the request for proposals and prompt notice is given to all offerors as to which offerors have been short listed;

(2) A conceptual design fee may be paid to non-selected offerors that submit a technically responsive proposal; provided that the cost of the entire project is greater than \$1,000,000; and

- (3)¹ The criteria for pre-qualification of offerors, design requirements, development documents, proposal evaluation criteria, terms of the payment of a conceptual design fee, or any other pertinent information shall be stated in the request for proposals.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved July 11, 2011.)

Note

1. Should be underscored.

ACT 212

H.B. NO. 320

A Bill for an Act Relating to Broker Price Opinions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 466K-4, Hawaii Revised Statutes, is amended to read as follows:

“§466K-4 Practice as a real estate appraiser; uniform standards. (a) No person may practice as a real estate appraiser in this State unless that person has been licensed or certified to practice in accordance with this chapter and rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. All real estate appraisers who are licensed or certified to practice in this State shall comply with the current uniform standards of professional appraisal practice approved by the director when performing appraisals in connection with a federally or non-federally related real estate transaction.

(b) This section shall not apply to any real estate appraiser employed by any county for purposes of valuing real property for ad valorem taxation.

(c) This section shall not apply to a real estate broker or real estate salesperson licensed pursuant to chapter 467 who provides an opinion as to the estimated price of real estate, regardless of whether the real estate licensee receives compensation, a fee, or other consideration for providing the opinion; provided that:

- (1) The opinion as to the estimated price of real estate shall state that it is not an appraisal;
- (2) The real estate licensee shall not represent that the licensee is a certified or licensed real estate appraiser; and
- (3) If the real estate licensee receives compensation related to the sale of property, the licensee shall not receive any additional compensation, fee, or other consideration for providing an opinion as to the estimated price of that property.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 11, 2011.)

A Bill for an Act Relating to Water Carriers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State's water cargo transportation industry is critical to the economic health of its island communities. In recognition of the significance of a healthy, efficient, and accessible water transportation system, the legislature passed the Hawaii Water Carrier Act, codified as chapter 271G, Hawaii Revised Statutes, to subject water carriers to the regulatory oversight of the public utilities commission.

The regulatory framework created by chapter 271G, Hawaii Revised Statutes, includes a requirement that a water carrier apply for and receive a certificate of public convenience and necessity from the public utilities commission before engaging in operations within the State. Issuance of a certificate of public convenience and necessity requires findings that the applicant is willing and able to properly perform the proposed service and conform to the applicable laws and rules, and that the proposed service is currently required for the convenience and necessity of the public or that it will be in the future.

Experience has shown that efficient, reliable, frequent, and universal water carrier service depends on economies of scale and scope, as well as the substantial investment of capital and other resources. A successful regulatory regime must take into account and accommodate these realities. In reviewing applications to offer new services within the existing regulatory environment, the public utilities commission must ensure that the entry of new services and service providers does not erode the underpinnings of the regulatory framework or threaten future investment in service and infrastructure in a manner that risks the loss of existing services. To this end, a mere recitation of the purported benefits of market competition is not, without specific supporting facts on the record, sufficient to support a finding of present or future public convenience and necessity.

The legislature finds that applications for entry into the regulated water carrier market require in-depth analysis of specific issues of public convenience and necessity to ensure that successful applications serve the public interest and protect communities from the risk of harm.

Accordingly, the purpose of this Act is to clarify the legislative intent that underlies the existing requirement for a finding of present or future public convenience and necessity for the issuance of a certificate of public convenience and necessity.

SECTION 2. Chapter 271G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§271G- Notice of hearing required. (a) Whenever the commission conducts a public hearing on an application for a certificate pursuant to section 271G-10, the commission shall provide reasonable notice in writing to the applicant for a certificate and to the public on each island that will be affected by the proposed service of the fact of the public hearing and the matter to be considered. Notice pursuant to this section shall be provided at least thirty days before the date fixed by the commission for the public hearing.

(b) Notice provided pursuant to this section shall plainly state the proposed operations, routes, and services of the applicant and the proposed effective date. Notice under this section shall be effective upon compliance with subsection (c); provided that the commission shall retain and make available for public

inspection copies of all notices and related documents issued pursuant to this section.

(c) Any public hearing held pursuant to section 271G-10(c) shall be a noticed public hearing or hearings on the island or islands to which the water carrier proposes to provide services or which will be affected by the proposed service. Notice of the hearing, its purpose, and the date, time, and place at which it will open shall be given not less than once in each of three weeks on each island in the county or counties to which the water carrier proposes to provide services or which will be affected by the proposed service. The first notice shall be given not less than twenty-one days before the public hearing and the last notice shall be given not more than two days before the public hearing.”

SECTION 3. Section 271G-10, Hawaii Revised Statutes, is amended to read as follows:

“[§271G-10] Applications for certificates of public convenience and necessity. (a) Except as otherwise provided in this section and in sections 271G-6 and 271G-12, no water carrier shall engage in operations between points within the State[;] unless [such] the carrier holds a certificate of public convenience and necessity issued by the public utilities commission authorizing [such] the operation[;]; provided that no new application shall be required for any common carrier by water [who] that is the holder of a certificate of public convenience and necessity issued by the public utilities commission.

(b) Applications for certificates shall be made in writing to the commission, be verified under oath, [and shall] be presented in [such] a form [and], contain [such] the information, and be accompanied by proof of service upon interested parties as the commission shall, by [regulation,] rule, require.

(c) The commission shall not approve an application for a certificate or otherwise grant authorization pursuant to an application to operate as a water carrier under this chapter until the commission has given notice and held public hearings conducted in accordance with the procedures under section 271G-

[~~(e) A certificate shall be issued~~] (d) The commission shall issue a certificate to any qualified applicant [therefor], authorizing the whole or any part of the operations [covered by] proposed in the application [if it is found that the] only if the commission finds that:

- (1) The applicant is fit, willing, and able properly to perform the service proposed and to conform to this chapter and the requirements[;] and rules[, and regulations] of the commission [thereunder, and that the]; and
- (2) The proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity[; otherwise the application shall be denied].

(e) The commission shall not make a finding of public convenience and necessity or issue an authorization, whether interim, permanent, or otherwise, to operate as a water carrier without the following specific findings supported by evidence in the record:

- (1) Existing water carrier services are inadequate to presently service the public or meet demonstrated and quantifiable future demands for service;
- (2) The proposed service is designed for and necessary to meet demonstrated and quantifiable unmet public needs for present water carrier service or demonstrated and quantifiable future demands for service;

- (3) The proposed service will provide demonstrated and quantifiable benefits to the general public, business community, and the economy of all islands that are entitled to notice under section 271G-, including demonstrated and quantifiable benefits with respect to reliability, affordability, and security of the service line;
- (4) The specific, identified benefits of the proposed service outweigh its detrimental impact to the public's interest in maintaining services, including:
 - (A) Economies of scale and scope of current water carriers;
 - (B) Future capital costs of existing water carriers;
 - (C) Ability of existing water carriers to make necessary capital and resource investments;
 - (D) The financial health, stability, and revenue stream of existing water carriers; and
 - (E) The likelihood that existing levels of service will be maintained after the enactment of the proposed service; and
- (5) If the commission's finding of public convenience and necessity differs from the recommendation of the consumer advocate, specific findings to address each ground for objection articulated by the consumer advocate.

The commission shall not make a finding of public convenience and necessity nor issue a certificate if the evidence in the record indicates that the issuance of the certificate would diminish an existing water carrier's ability to realize its allowed rate of return or if the certificate would allow an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing carrier.

~~(d)~~ (f) Any water carrier transporting passengers under [any such] a certificate issued pursuant to this chapter may occasionally deviate from the route over which it is authorized to operate under the certificate [under such] pursuant to the rules [and regulations as the] of the commission [may prescribe].

(g) The commission shall not issue any certificate that is designated as interim or temporary or that otherwise does not conform to the requirements of this chapter except in response to an emergency situation; provided that an emergency situation shall mean a state-declared emergency including disaster relief pursuant to chapter 127 or a civil defense emergency pursuant to chapter 128. Any certificate issued pursuant to this subsection shall expire upon the expiration of the state-declared emergency or an earlier date determined by the commission in response to prevailing conditions. An extension of a certificate granted under this subsection beyond the expiration of the state-declared emergency or date determined by the commission shall be granted only subject to the notice, hearing, and findings requirements of this chapter.

(h) The commission shall post a link on the front page of the commission's website to a publicly accessible electronic version of each application for a certificate pursuant to this section and to each order of the commission regarding posted applications, including the commission's final decision and order. Links posted under this subsection shall include a short description of the document to which the link refers, shall be active within twenty-four hours of the filing of an application or issuance of an order, and shall remain active for at least thirty days from the filing of the application or the issuance of the order or decision and order."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2011.

(Approved July 11, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 214

H.B. NO. 688

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. (a) The board of education shall monitor the department of education for compliance with any department of education administrative rules or statutes governing bullying, cyberbullying, and harassment.

(b) The board of education shall establish reporting requirements for the department of education to report to the board of education on the department of education's compliance with any department of education administrative rules or statutes governing bullying, cyberbullying, and harassment.

(c) As used in this Act, "bullying", "cyberbullying", and "harassment" shall have the same meanings as defined in any department of education administrative rules or statutes governing bullying, cyberbullying, and harassment.

SECTION 2. This Act shall take effect on July 1, 2011.

(Approved July 11, 2011.)

ACT 215

S.B. NO. 11

A Bill for an Act Relating to the Department of the Sheriff.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the sheriff division of the department of public safety shoulders responsibilities that are integral to preserving the public peace and safety. Specifically, the division:

- (1) Serves and protects the public, government officials, and state personnel and property under its jurisdiction, including at state facilities, lands, and airports, and within the jurisdictional boundaries of the State, by providing law enforcement services that incorporate patrols, surveillance, and educational activities;
- (2) Protects state judges and judicial proceedings, secures judicial facilities, safely handles detained persons, and provides secure transport for persons in custody; and
- (3) Executes arrest warrants for the judiciary and the Hawaii paroling authority.

The purpose of this Act is to establish a task force that, among other things, will:

- (1) Determine whether the department of public safety is capable of supporting and maintaining the function of the sheriff division;

- (2) Study the feasibility and essential need to create a new department of the sheriff that would assume the duties and functions of the sheriff division of the department of public safety; and
- (3) Create a plan for the establishment of a new department only if the aforementioned task force study determines that the new department is feasible, essential, and capable of supporting and maintaining the duties and functions of the sheriff division.

SECTION 2. (a) There shall be established a task force that shall:

- (1) Determine whether the department of public safety is capable of supporting and maintaining the duties and functions of the sheriff division;
- (2) Determine whether it is feasible and essential to create a department of the sheriff; and
- (3) If the study determines the new department is feasible and essential, create a plan to establish a new department of the sheriff with functions presently existing under the sheriff division of the department of public safety and other functions deemed appropriate, including the broad functions enumerated in section 3 of this Act. The plan shall also include a process for implementation of the plan to establish a department of the sheriff.
 - (b) The task force shall consist of the following members:
 - (1) The sheriff, or the sheriff's designee, to serve as chair;
 - (2) The director of public safety, or the director's designee;
 - (3) The director of human resources development, or the director's designee;
 - (4) The director of finance, or the director's designee;
 - (5) The attorney general, or the attorney general's designee;
 - (6) The administrator of the courts, or the administrator's designee; and
 - (7) The executive director of the Hawaii Government Employees Association, or the executive director's designee.
 - (c) The task force shall report its findings and recommendations, including proposed legislation, if any, to the legislature no later than twenty days prior to the convening of the regular session of 2012. If the task force finds that the creation of a department of the sheriff is feasible and essential, the report shall include cost estimates to establish the department of the sheriff.
 - (d) The task force shall cease to exist on May 1, 2012.

SECTION 3. For purposes of determining whether it is feasible and essential to establish the department of the sheriff pursuant to section 2 of this Act, the task force shall consider the inclusion of the following broad functions in that department:

- (1) Preserving the public peace, preventing crime, detecting and arresting offenders against the law, protecting the rights of persons and property, and enforcing and preventing violation of all laws and administrative rules of the State as the sheriff deems necessary or desirable or, upon request, to assist other state officers or agencies that have primary administrative responsibility over specific subject matters or programs;
- (2) Providing for the protection and safety of the people of Hawaii through law enforcement at state facilities, lands, harbors, and airports, and within the jurisdictional boundaries of the State;

- (3) Receiving and processing arrestees at the district and circuit courts and for the neighbor islands, at the respective county police department receiving desks, and transporting them to appropriate agencies and authorized individuals;
- (4) Training, equipping, maintaining, and supervising the force of deputy sheriffs and other employees of the department; and
- (5) Performing other law enforcement activities as may be required by law, including the service of warrants.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 11, 2011.)

ACT 216

S.B. NO. 45

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of

- the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
- (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
- (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
- (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
- (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
- (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impractic-

- cable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the Hawaii State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
 - (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
 - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
 - (19) Household employees at the official residence of the president of the University of Hawaii;
 - (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
 - (21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
 - (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
 - (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
 - (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the Hawaii State Constitution;
 - (25) ~~[Sheriff, first deputy sheriff, and second deputy sheriff;]~~ The sheriff;
 - (26) A gender and other fairness coordinator hired by the judiciary; and
 - (27) Positions in the Hawaii national guard youth and adult education programs.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2012.

(Approved July 11, 2011.)

A Bill for an Act Relating to Renewable Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the development of renewable energy in Hawaii is crucial to the energy security and energy independence of the State. Increased energy efficiency and use of renewable energy resources will achieve broad societal benefits, including resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

The legislature also finds that Hawaii's dependence on petroleum makes the State extremely vulnerable to supply disruption, international market dysfunction, and many other factors beyond the control of the State. Continued consumption of conventional petroleum fuel and price volatility can negatively impact the viability of agricultural operations.

The legislature further finds that allowing renewable energy facilities within the agricultural district furthers and is consistent with the purposes, standards, and criteria for uses within agricultural lands. Renewable energy facilities increase the State's energy self sufficiency and agricultural sustainability.

The purpose of this Act is to increase, with certain limitations, the areas within agricultural lands in which solar energy facilities may be constructed.

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind generated energy production for public, private, and commercial use;
- (5) Biofuel production, as described in section 205-4.5(a)(15), for public, private, and commercial use;
- (6) Solar energy facilities; provided that ~~[this]:~~
 - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D or E; and
 - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser;
- (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy facilities as defined in section 205-4.5(a)(16), vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);
- (8) Wind machines and wind farms;

- (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- (10) Agricultural parks;
- (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; and
- (12) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Within the agricultural district, all lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. “Farm dwelling”, as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;

- (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
 - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
 - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
 - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

“Appurtenances” means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuels processing facilities.

“Biofuel processing facility” means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- (16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be

considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

“Agricultural activity” means any activity described in paragraphs (1) to (3) of this subsection.

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

“Appurtenances” means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

- (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, “wireless communication antenna” means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection; [Ø]
- (18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, “agricultural education programs” means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2[-]; or
- (19) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 11, 2011.)

A Bill for an Act Relating to Permitting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that currently, an applicant for a building permit must submit an application to each agency that has jurisdiction over a certain aspect of the project. Many times, this means that an applicant must wait for approval from one agency before submitting an application to another agency for approval of another aspect of the project. At times, an agency may decline to approve an aspect of a project that was approved by another agency that reviewed an application related to the project. Other times, an application may be declined without an explanation as to why it was rejected.

President Obama recently issued an executive order directing federal agencies to reduce regulatory burdens on small businesses and foster economic growth while protecting the health and safety of all Americans. The executive order requires federal agencies to "tailor" their regulations in such a way as to minimize costs to businesses while achieving the objectives of the federal agencies. In short, federal agencies must consider costs and benefits of possible regulations and choose the least burdensome path.

Under the executive order, federal agencies must attempt to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public. Federal regulations must also be necessary and up to date - outdated regulations are to be amended or repealed. President Obama also directed federal agencies to increase their flexibility, known as regulatory flexibility, in implementing regulations since regulations may impose substantial compliance costs on small businesses. Whereas large businesses may be able to absorb the costs of compliance with minimal impact, smaller businesses may find these same regulations to be financially burdensome. Overall, the initiative is part of an ongoing effort to improve governmental efficiency.

The legislature finds that Hawaii should undertake a similar review of state and county administrative rules affecting businesses with a view to streamline the approval process for businesses by amending or repealing rules that may impose burdensome or unnecessary costs to businesses.

The purpose of this Act is to create a temporary task force to study and make recommendations on state and county administrative rules, particularly those relating to county building permits, with a view toward streamlining the approval process for businesses.

SECTION 2. (a) The comptroller, with the assistance of the director of the department of planning and permitting of the city and county of Honolulu, shall convene the initial meeting of a temporary task force to review and identify state and county administrative rules affecting businesses, particularly with regard to county building permits, with a view toward streamlining the approval process for businesses through the amending or repealing of rules that may impose burdensome or unnecessary costs for businesses of all sizes but especially for smaller businesses. At the initial meeting, the members shall select a member from among them to serve as chairperson of the task force.

- (b) The task force shall be composed of the:
 - (1) President of the Building Industry Association of Hawaii;
 - (2) Executive director of the Pacific Resource Partnership;
 - (3) Director of transportation;
 - (4) Chairperson of the board of land and natural resources;

- (5) Director of business, economic development, and tourism;
 - (6) Comptroller;
 - (7) Director of the department of planning and permitting of the city and county of Honolulu;
 - (8) Director of the department of planning of the county of Maui;
 - (9) Director of the department of planning of the county of Kauai; and
 - (10) Director of the department of planning of the county of Hawaii;
- provided that each member may select a designee to serve on the task force.

(c) The task force shall make recommendations to the governor, the mayor of each county, and the heads of state and county agencies on any administrative rules that need to be amended or repealed in the interest of streamlining government for efficiency and responsiveness to businesses.

(d) The task force shall report to the legislature the findings and recommendations of the temporary task force no later than twenty days prior to the convening of the regular session of 2012.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 11, 2011.)

ACT 219

S.B. NO. 1530

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many of the leases for hotel and resort properties on state land, such as in the Banyan Drive area in Hilo, Hawaii, are nearing the end of the lease term. Faced with the uncertainty of continued tenancy, lessees have little incentive to make major investments in infrastructural improvements and to ensure the long-term maintenance of the facilities. As a result, the infrastructure on these properties has been deteriorating.

Act 55, Session Laws of Hawaii 2000, attempted to address the problem of deteriorating hotel and resort infrastructure in east Hawaii on the island of Hawaii by authorizing the board of land and natural resources to issue new leases to the existing lessees in the Banyan Drive area. However, this Act was later found to be unconstitutional under article XI, section 5, of the Hawaii State Constitution.

The legislature finds that business lessees typically sell or assign their leases that are nearing the end of the lease terms at a discount, and believes that it would be unfair to the prior assignors of the leases if the State granted extensions of leases that previously could not be extended under existing law or lease terms to the newly-assigned lessees who acquired their leases at a discount due to short remaining lease terms.

The purpose of this Act is to authorize the board of land and natural resources to extend hotel or resort leases that have not been sold or assigned within the last five years, for lessees who commit to substantial improvement to the existing improvements.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Hotel or resort leases; extension of term. (a) Notwithstanding section 171-36, the board may extend the rental period of a lease of public lands for hotel or resort use upon the approval by the board of a development agreement proposed by the lessee or by the lessee and developer to make substantial improvements to the existing improvements.

(b) Prior to entering into a development agreement, the lessee or the lessee and developer shall submit to the board the plans and specifications for the total development being proposed. The board shall review the plans and specifications and determine:

- (1) Whether the development proposed in the development agreement is of sufficient worth and value to justify the extension of the lease;
- (2) The estimated period of time to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the board, and the percentage of rent where gross receipts exceed a specified amount.

No lease extension shall be approved until the board and the lessee or the lessee and developer mutually agree to the terms and conditions of the development agreement.

(c) No construction shall commence until the lessee or the lessee and developer have filed with the board a sufficient bond conditioned upon the full and faithful performance of all the terms and conditions of the development agreement.

(d) Any extension of a lease pursuant to this section shall be based upon the substantial improvements to be made and shall be for a period not longer than fifty-five years.

(e) Any extension of a lease granted pursuant to this section shall be effectuated, documented, and executed using the most current lease form and leasing practices and policies of the board. The intent of this subsection is to ensure that an extended lease, like the issuance of a new lease, will be subject to the most current leasing practices and policies of the board, which shall be incorporated into the lease document.

(f) The applicant for a lease extension shall pay all costs and expenses incurred by the department in connection with the processing, analyzing, and negotiating of any lease extension request and document, and the development agreement under subsections (a) and (b).

(g) As used in this section, “substantial improvements” means any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds fifty per cent of the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

(h) As used in this section, “hotel or resort” means a development that provides transient accommodations as defined in section 237D-1 and related services, which may include a front desk, housekeeping, food and beverage, room service, and other services customarily associated with transient accommodations; provided that no development shall qualify as a hotel or resort under this section unless at least seventy-five per cent of the living or sleeping quarters in the development are used solely for transient accommodations for the term of any lease extension.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2011; provided that this Act shall be repealed on December 31, 2015.

(Approved July 11, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 220

H.B. NO. 761

A Bill for an Act Relating to Intellectual Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 324, Hawaii Revised Statutes, is amended by amending the title of part II to read as follows:

**“PART II. MENTAL HEALTH AND ~~[MENTAL RETARDATION]~~
INTELLECTUAL DISABILITY STUDIES”**

SECTION 2. Chapter 333F, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“SERVICES FOR PERSONS WITH DEVELOPMENTAL ~~[DISABILITIES]~~
OR ~~[MENTAL RETARDATION]~~ INTELLECTUAL DISABILITIES”**

SECTION 3. Section 333F-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any law to the contrary, the family court may appoint the director as guardian of any person if the court finds that:

- (1) The person is an incapacitated person as defined in section 560:5-102;
- (2) The person is developmentally or intellectually disabled [~~or mentally retarded~~];
- (3) The person may reasonably be expected to need treatment or care at any residential facility; and
- (4) There is no other suitable guardian including the public guardian as designated in chapter 551A who is able or willing to serve as guardian.”

SECTION 4. Section 346-230, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon the department’s determination that protective services are no longer needed, the vulnerable adult shall be referred to the agency responsible for follow-up services. For the mentally ill, ~~mentally retarded, or developmentally disabled adult,~~ or adults with developmental or intellectual disabilities, the state agency designated to provide services shall be the department of health.”

SECTION 5. Section 346D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Waiver programs shall be established and administered by the department of human services to provide comprehensive home and community-based services for the aged, chronically ill, disabled, developmentally disabled,

and ~~[mentally retarded individuals,]~~ individuals with intellectual disabilities, who are certified as requiring acute, skilled nursing, intermediate care facility, or intermediate care facility for ~~[the mentally retarded]~~ individuals with intellectual disabilities level of care.”

SECTION 6. Section 431:10-212, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“§431:10-212 Contract limitations for ~~[mentally retarded and]~~ handicapped children~~[-]~~ and children with intellectual disabilities.”

SECTION 7. Section 432:1-601, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“§432:1-601 Contract limitations for ~~[mentally retarded and]~~ handicapped children~~[-]~~ and children with intellectual disabilities.”

SECTION 8. Section 571-11, Hawaii Revised Statutes, is amended to read as follows:

“§571-11 Jurisdiction; children. Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age ~~[which]~~ that would constitute a violation or attempted violation of any federal, state, or local law or ~~[municipal]~~ county ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred;
- (2) Concerning any child living or found within the circuit:
 - (A) Who is neglected as to or deprived of educational services because of the failure of any person or agency to exercise that degree of care for which it is legally responsible;
 - (B) Who is beyond the control of the child’s parent or other custodian or whose behavior is injurious to the child’s own or others’ welfare;
 - (C) Who is neither attending school nor receiving educational services required by law whether through the child’s own misbehavior or nonattendance or otherwise; or
 - (D) Who is in violation of curfew;
- (3) To determine the custody of any child or appoint a guardian of any child;
- (4) For the adoption of a person under chapter 578;
- (5) For the termination of parental rights under sections 571-61 ~~[to]~~ through 571-63;
- (6) For judicial consent to the marriage, employment, or enlistment of a child, when ~~[such]~~ consent is required by law;
- (7) For the treatment or commitment of a mentally defective~~[-, mentally retarded,-]~~ or mentally ill child~~[-]~~, or a child with an intellectual disability;
- (8) Under the Interstate Compact on Juveniles under chapter 582 or the Interstate Compact for Juveniles under chapter 582D;
- (9) For the protection of any child under chapter 587A; and
- (10) For a change of name as provided in section 574-5(a)(2)(C).”

SECTION 9. Section 46-4, Hawaii Revised Statutes, is amended by substituting the words “individuals with intellectual disabilities” wherever the words “mentally retarded individuals” or “mentally retarded” appear, as the context requires.

SECTION 10. Sections 46-4 and 518-3, Hawaii Revised Statutes, are amended by substituting the words “intermediate care facility for individuals with intellectual disabilities in the community” wherever the words “intermediate care facility/mental retardation-community” appear, as the context requires.

SECTION 11. Sections 321-11.5, 321-15.2, 346-29.5, 346-37, 346D-2, 346D-3, 346E-1, and 846-2.7, Hawaii Revised Statutes, are amended by substituting the term “intermediate care facility for individuals with intellectual disabilities” or “intermediate care facilities for individuals with intellectual disabilities” wherever the term “intermediate care facility for the mentally retarded” or “intermediate care facilities for the mentally retarded” appears, as the context requires.

SECTION 12. Sections 321-15.9, 324-11, 328C-1, 333F-1, 333F-22, 431:10-212, 431:10D-212, 431M-1, 432:1-601, and 461-1, Hawaii Revised Statutes, are amended by substituting the term “intellectual disability” or “intellectual disabilities” wherever the term “mental retardation” appears, as the context requires.

SECTION 13. Sections 321-15.9, 333F-1, 333F-2, 333F-3, 333F-5, 333F-6, 333F-8, 333F-13, and 333F-22, Hawaii Revised Statutes, are amended by substituting the words “developmental or intellectual disabilities”, or like term, wherever the words “developmental disabilities or mental retardation”, or like term, appear, as the context requires.

SECTION 14. Section 333F-2, Hawaii Revised Statutes, is amended by substituting the acronym “ICF/ID” wherever the acronym “ICF/MR” appears, as the context requires.

SECTION 15. Sections 383-7, 386-1, 392-5, and 393-5, Hawaii Revised Statutes, are amended by substituting the words “developmental and intellectual disabilities” wherever the words “developmental disabilities and mental retardation” appear, as the context requires.

SECTION 16. Section 571-22, Hawaii Revised Statutes, is amended by substituting the words “individuals with intellectual disabilities” wherever the term “the mentally defective or retarded” appears, as the context requires.

SECTION 17. Sections 571-61 and 578-2, Hawaii Revised Statutes, are amended by substituting the term “intellectually disabled” wherever the term “mentally retarded” appears, as the context requires.

SECTION 18. This Act is not intended to change the coverage, eligibility, rights, responsibilities or definitions referred to in the amended provisions.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 20. This Act shall take effect on July 1, 2011; provided that the amendments made to sections 321-11.5(b) and 321-15.2, Hawaii Revised Statutes, by section 11 of this Act shall not be repealed when section 321-11.5(b) and the definition of "healthcare facility" in section 321-15.2 are reenacted on June 30, 2014, by section 8 of Act 21, Special Session Laws of Hawaii 2009.

(Approved July 11, 2011.)

ACT 221

H.B. NO. 739

A Bill for an Act Relating to Community Care Foster Family Homes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-331, Hawaii Revised Statutes, is amended by amending the definition of "community care foster family home" to read as follows:

"Community care foster family home" or "home" means a home that, for the purposes of this part:

- (1) Is regulated by the department in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;
- (2) Is issued a certificate of approval by the department or its designee to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, at least one of whom shall be a medicare recipient, who are at the nursing facility level of care, who are unrelated to the foster family, and who are receiving the services of a licensed home and community-based case management agency; provided that the department, in its discretion, may certify a home for a third adult who is at the nursing level of care and a medicare recipient; provided that the:
 - (A) Home has been certified and in operation for not less than one year;
 - (B) ~~[primary and substitute caregivers are certified nurse aides who have]~~ Primary caregiver is a certified nurse aide, as defined in section 457A-1.5, who has completed a state-approved training program and other training as required by the department; and
 - (C) Substitute caregiver is a nurse aide, as defined in section 457A-1.5, who has completed a state-approved training program and other training as required by the department; and
- (3) Does not include expanded adult residential care homes or assisted living facilities, which shall continue to be licensed by the department of health."

SECTION 2. Section 346-334, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards of conditions and competence for the operation of community care foster family homes;
- (2) Procedures for obtaining and renewing a certificate of approval from the department; ~~[and]~~

- (3) Minimum grievance procedures for clients of community care foster family home services[-]; and
- (4) Requirements for primary and substitute caregivers caring for three clients in community care foster family homes including:
- (A) Mandating that primary and substitute caregivers be twenty-one years of age or older;
 - (B) Mandating that primary and substitute caregivers complete a minimum of twelve hours of continuing education every twelve months or at least twenty-four hours of continuing education every twenty-four months;
 - (C) Allowing the primary caregiver to be absent from the community care foster family home for no more than twenty-eight hours in a calendar week, not to exceed five hours per day; provided that the substitute caregiver is present in the community care foster family home during the primary caregiver's absence;
 - (D) Where the primary caregiver is absent from the community care foster family home in excess of the hours as prescribed in subparagraph (C), mandating that the substitute caregiver be a certified nurse aide; and
 - (E) Mandating that the substitute caregiver have, at a minimum, one year prior work experience as a caregiver in a community residential setting or in a medical facility."

SECTION 3. The department of human services shall evaluate the implementation of the provisions of this Act and provide a report to the legislature no later than twenty days prior to the convening of the regular session of 2012.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2011; provided that on June 30, 2013, this Act shall be repealed and sections 346-331 and 346-334, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved July 11, 2011.)

ACT 222

S.B. NO. 782

A Bill for an Act Relating to Dangerous Weapons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§134- Explosive devices; prohibitions; penalty. (a) It shall be unlawful for any person to knowingly or intentionally possess, construct, set off, ignite, discharge, or otherwise cause to explode any homemade explosive device.

(b) Any person violating this section shall be guilty of a class C felony.

(c) A violation of this section shall be construed as an offense distinct from an offense under section 134-8.

(d) For the purposes of this section, "homemade explosive device" means a non-commercially manufactured device composed of a single ingredient, or mixture of ingredients, capable of instantaneously releasing a sufficient amount of energy to inflict substantial damage to persons or property."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 12, 2011, without the governor's signature, pursuant to Art III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 223

H.B. NO. 1138

A Bill for an Act Relating to Attorney's Liens.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 507, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

"§507- Liens on attorneys; certified shorthand reporter services. (a) Subject to the notice requirements in subsection (b) and the exemptions described in subsection (d), a certified shorthand reporter furnishing a stenographic record of any judicial proceeding, deposition, statement, or interview of a party in a proceeding or a copy of the stenographic record to an attorney at the attorney's request shall create a debt owing to the certified shorthand reporter by the attorney's firm, partnership, corporation, company, or other legal entity pursuant to which the attorney practices law, which may be enforced by the certified shorthand reporter in circuit or district court, as applicable. The amount of the debt shall not exceed the payment agreed to between the attorney and the certified shorthand reporter at the time the stenographic services are requested.

(b) Concurrently with the delivery to the requesting attorney of the completed stenographic record or the final component or part thereof, or as soon as a tally of recoverable costs can be calculated, the certified shorthand reporter shall deliver an invoice listing the amount due for the stenographic services. If the requesting attorney does not pay for the stenographic record within sixty days of the receipt of the completed stenographic record and the invoice, the certified shorthand reporter may send a notice to the attorney that a lien in the amount described in subsection (a) shall be imposed on the assets of the attorney's firm, partnership, corporation, company, or other legal entity pursuant to which the attorney practices law, within fifteen calendar days. Thereafter, if payment is not made to the certified shorthand reporter, the lien may be enforced by the certified shorthand reporter as allowed by law.

(c) The requesting attorney, or the attorney's firm, partnership, corporation, company, or other legal entity pursuant to which the attorney practices law, may dispute the amount due to the stenographic services listed in the invoice or the completeness or accuracy of the stenographic record at any time, and may seek declaratory relief from the circuit court that the debt is not owed.

Nothing in this section shall prohibit an attorney or the attorney's firm, partnership, corporation, company, or other legal entity pursuant to which the attorney practices law, from pursuing a third-party claim against the requesting attorney's client for payment of stenographic services.

- (d) This section shall not apply when:
 - (1) Payment to the certified shorthand reporter is otherwise provided by law; or
 - (2) The attorney expressly disclaims responsibility for payment of the stenographic service or record, in writing, at the time that the attorney orders or requests that a record be made."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2011.

(Became law on July 12, 2011, without the governor's signature, pursuant to Art III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 224

S.B. NO. 173

A Bill for an Act Relating to Fire Protection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that novelty cigarette lighters have features that are attractive to children, including visual effects, flashing lights, musical sounds, or toy-like designs. The Consumer Product Safety Commission has recalled thousands of novelty lighters since 1996 due to their danger to public safety. Fires started by juveniles have been identified as the fastest growing fire threat in the United States, resulting in more than three hundred deaths annually, a third of which are deaths of children. Fires started by children have also resulted in almost \$1,000,000,000 in property damage.

Many local and national public safety agencies, including the National Fire Protection Association, Western Fire Chiefs Association, and the National Association of State Fire Marshals, support a ban on the sale and distribution of novelty lighters. As of November 2010, fourteen states have banned the retail sale or distribution of novelty lighters.

The legislature finds that the function of a lighter can be achieved without creating a dangerous novelty attraction to children. Accordingly, the purpose of this Act is to ban the sale or distribution of novelty lighters within the State.

SECTION 2. Chapter 132, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§132- Novelty lighters; prohibited; penalties. (a) No person shall sell, offer for sale, or otherwise distribute any novelty lighter within the State.

(b) As used in this section, "novelty lighter" means a handheld device that is designed to use fuel to produce flame for the ignition of cigarettes, cigars, or pipes, and has a design that would make it particularly attractive to children ten years of age or younger.

“Novelty lighter” includes but is not limited to lighters that:

- (1) Depict or resemble cartoon characters, toys, guns, watches, games, musical instruments, vehicles, animals, food, or beverages;
- (2) Produce sounds or music;
- (3) Have flashing lights or illumination; or
- (4) Any combination of the above.

(c) This section shall not apply to the following:

- (1) Novelty lighters that are manufactured in the State or transported through the State, exclusively for sale, offer for sale, or distribution outside the State;
- (2) Any lighter manufactured prior to 1980 or any lighter that lacks fuel or a component necessary to produce flame or combustion; and
- (3) Standard disposable and refillable lighters that are printed or decorated with logos, labels, decals, or artwork, or heat shrinkable sleeves.

(d) Any person who violates this section shall be guilty of a misdemeanor and shall be imprisoned for not more than one year or fined not more than \$1,000, or both.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 12, 2011, without the governor’s signature, pursuant to Art III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 225

S.B. NO. 946

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 634, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . ANONYMOUS FILINGS

§634- Anonymous filings. (a) Upon petition to a court under this section, the court may allow a petition, complaint, motion, or other document to be filed by a party identifying the parties as “jane doe” or “john doe”; provided that when deciding to permit a “jane doe” or “john doe” filing, the court may consider factors including:

- (1) The severity of the petitioner’s injury;
- (2) The reasonableness of the petitioner’s fears of reprisal;
- (3) The petitioner’s vulnerability to retaliation from the action;
- (4) The risk of prejudice to the other party; and
- (5) Whether the public interest would be served by allowing the petitioner to remain anonymous.

(b) If there are compelling reasons sufficient to outweigh the public interest in the disclosure of the parties and it is the belief of the court that the par-

ties' court files may become a vehicle for improper use if not made anonymous, the court may seal from the public all documents or portions of documents, including all subsequently filed documents, that would identify the parties or contain sufficient information from which the parties' identity could be discerned or inferred."

SECTION 2. Section 604-10.5, Hawaii Revised Statutes, is amended to read as follows:

"§604-10.5 Power to enjoin and temporarily restrain harassment. (a) For the purposes of this section:

"Course of conduct" means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose.

"Harassment" means:

- (1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or
- (2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual[;] and [that] serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

(b) The district courts shall have the power to enjoin [ø], prohibit, or temporarily restrain harassment.

(c) Any person who has been subjected to harassment may petition the district court of the district in which the petitioner resides for a temporary restraining order and an injunction from further harassment.

(d) A petition for relief from harassment shall be in writing and shall allege that a past act or acts of harassment may have occurred[;] or that threats of harassment make it probable that acts of harassment may be imminent; and shall be accompanied by an affidavit made under oath or statement made under penalty of perjury stating the specific facts and circumstances [frø] for which relief is sought.

(e) Upon petition to a district court under this section, the court may allow a petition, complaint, motion, or other document to be filed identifying the petitioner as "jane doe" or "john doe"; provided that the court finds that the "jane doe" or "john doe" filing is reasonably necessary to protect the privacy of the petitioner and will not unduly prejudice the prosecution or the defense of the action.

In considering a petition requesting a "jane doe" or "john doe" filing, the court shall weigh the petitioner's interest in privacy against the public interest in disclosure.

The court, only after finding clear and convincing evidence that would make public inspection inconsistent with the purpose of this section, may seal from the public all documents or portions of documents, including all subsequently filed documents, that would identify the petitioner or contain sufficient information from which the petitioner's identity could be discerned or inferred. Access to identifying information may be permitted to law enforcement or other authorized authority, in the course of conducting official business, to effectuate service, enforcement, or prosecution, or as ordered by the courts.

~~(e)~~ (f) Upon petition to a district court under this section, the court may temporarily restrain the person or persons named in the petition from harassing the petitioner upon a determination that there is probable cause to believe that a past act or acts of harassment have occurred or that a threat or threats of harassment may be imminent. The court may issue an ex parte temporary restraining

order either in writing or orally; provided that oral orders shall be reduced to writing by the close of the next court day following oral issuance.

~~(f)~~ (g) A temporary restraining order that is granted under this section shall remain in effect at the discretion of the court for a period not to exceed ninety days from the date the order is granted. A hearing on the petition to enjoin harassment shall be held within fifteen days after the temporary restraining order is granted. ~~[In the event that]~~ If service of the temporary restraining order has not been effected before the date of the hearing on the petition to enjoin, the court may set a new date for the hearing; provided that the new date shall not exceed ninety days from the date the temporary restraining order was granted.

The parties named in the petition may file or give oral responses explaining, excusing, justifying, or denying the alleged act or acts of harassment. The court shall receive all evidence that is relevant at the hearing~~[,]~~ and may make independent inquiry.

If the court finds by clear and convincing evidence that harassment as defined in paragraph (1) of that definition exists, it may enjoin for no more than three years further harassment of the petitioner, or that harassment as defined in paragraph (2) of that definition exists, it shall enjoin for no more than three years further harassment of the petitioner; provided that this paragraph shall not prohibit the court from issuing other injunctions against the named parties even if the time to which the injunction applies exceeds a total of three years.

Any order issued under this section shall be served upon the respondent. For the purposes of this section, "served" shall mean actual personal service, service by certified mail, or proof that the respondent was present at the hearing ~~[at]~~ at which the court orally issued the injunction.

Where service of a restraining order or injunction has been made or where the respondent is deemed to have received notice of a restraining order or injunction order, any knowing or intentional violation of the restraining order or injunction order shall subject the respondent to the provisions in subsection ~~(h)-~~ (i).

Any order issued shall be transmitted to the chief of police of the county in which the order is issued by way of regular mail, facsimile transmission, or other similar means of transmission.

~~(g)~~ (h) The court may grant the prevailing party in an action brought under this section~~[,]~~ costs and fees, including attorney's fees.

~~(h)~~ (i) A knowing or intentional violation of a restraining order or injunction issued pursuant to this section is a misdemeanor. The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:

- (1) For a violation of an injunction or restraining order that occurs after a conviction for a violation of the same injunction or restraining order, ~~[a violator]~~ the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours; and
- (2) For any subsequent violation that occurs after a second conviction for violation of the same injunction or restraining order, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon appropriate conditions, such as that the defendant remain ~~[alcohol]~~ alcohol- and drug-free, conviction-free, or complete court-ordered assessments or counseling. The court may suspend the mandatory sentences under paragraphs (1) and (2) where the violation of the injunction or restraining order does not involve violence or the threat of violence. Nothing in

this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense.

[(i)] (j) Nothing in this section shall be construed to prohibit constitutionally protected activity.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2012.

(Became law on July 12, 2011, without the governor’s signature, pursuant to Art III, §16, State Constitution.)

ACT 226

S.B. NO. 1533

A Bill for an Act Relating to Cruelty to Animals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 711-1109, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly:

- (a) Overdrives, overloads, tortures, torments, beats, causes substantial bodily injury[;] to, or starves any animal, or causes the overdriving, overloading, torture, torment, beating, or starving of any animal;
- (b) Deprives a pet animal of necessary sustenance or causes such deprivation;
- (c) Mutilates, poisons, or kills without need any animal other than insects, vermin, or other pests; provided that the handling or extermination of any insect, vermin, or other pest is conducted in accordance with standard and acceptable pest control practices and all applicable laws and regulations;
- (d) Keeps, uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, cock, or other animal, and includes every person who encourages, aids, or assists therein, or who permits or suffers any place to be so kept or used;
- (e) Carries or causes to be carried, in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner;
- (f) Confines or causes to be confined, in a kennel or cage, any pet animal in a cruel or inhumane manner;
- (g) Tethers, fastens, ties, or restrains a dog to a doghouse, tree, fence, or any other stationary object by means of a choke collar, pinch collar, or prong collar; provided that a person is not prohibited from using such restraints when walking a dog with a hand-held leash or while a dog is engaged in a supervised activity; or
- (h) Assists another in the commission of any act specified in subsections (1)(a) through (1)(g).”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Became law on July 12, 2011, without the governor's signature, pursuant to Art III, §16, State Constitution.)

ACT 227

S.B. NO. 975

A Bill for an Act Relating to Appraisals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to require a real estate appraiser to certify compliance with the Uniform Standards of Professional Appraisal Practice when acting as an appraiser or an arbitrator in an arbitration proceeding.

SECTION 2. Chapter 466K, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§466K- Definitions. For the purposes of this chapter, unless the context otherwise requires:

“Arbitrator” means an individual appointed to render an award in a controversy that is subject to an agreement to arbitrate.

“Uniform Standards of Professional Appraisal Practice” means the most recent iteration of the Uniform Standards of Professional Appraisal Practice developed by the appraisal standards board of The Appraisal Foundation and approved by the director.

§466K- Appraisers in arbitration proceedings. In an arbitration proceeding to determine the fair market value, fair market rental, or fair and reasonable rent of real property where the arbitrator is a real estate appraiser licensed under chapter 466K, the record of an award shall include but not be limited to findings of fact; the state-licensed appraiser's rationale for the award; the state-licensed appraiser's certification of compliance with the most current Uniform Standards of Professional Appraisal Practice as approved by the director; and information regarding the evidence, including the data, methodologies, and analysis that provided the basis for the award.”

SECTION 3. Section 466K-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person may practice as a real estate appraiser in this State unless that person has been licensed or certified to practice in accordance with this chapter and rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. All real estate appraisers who are licensed or certified to practice in this State shall comply with the current [~~uniform standards of professional appraisal practice~~] Uniform Standards of Professional Appraisal Practice approved by the director when performing appraisals in connection with a federally or non-federally related real estate transaction[-], or certify compliance with the current Uniform Standards of Professional Appraisal Practice in connection with any arbitration proceeding to determine the fair market value, fair market rental value, or fair and reasonable rent of real estate.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 12, 2011, without the governor's signature, pursuant to Art III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 228

H.B. NO. 1134

A Bill for an Act Relating to Prepaid Health Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the health and well-being of Hawaii's residents and families are paramount. Consequently, for over thirty years, the Hawaii Prepaid Health Care Act has protected the welfare of the people of Hawaii, offering residents unparalleled access to health care benefits and services. The Hawaii Prepaid Health Care Act has accomplished this through various mandates, such as requiring employers who employ one or more full-time employees to provide health insurance, setting the standards for health care coverage in Hawaii, limiting the amount that employees must contribute to premiums, and requiring employees to accept coverage unless covered under another health insurance plan (e.g., a spouse's plan). This has resulted in Hawaii having robust health care plans, low uninsured rates, and some of the lowest premiums in the country. While Hawaii experiences some of the same issues relative to access, quality, and cost as other states across the country, the Hawaii Prepaid Health Care Act has ensured system stability throughout the State.

The legislature further finds that at the time the Hawaii Prepaid Health Care Act was enacted, the legislature anticipated future federal health care reform legislation. Thus, the Hawaii Prepaid Health Care Act included a termination clause in the event such federal legislation was passed. Section 393-51, Hawaii Revised Statutes, states:

This chapter shall terminate upon the effective date of federal legislation that provides for voluntary prepaid health care for the people of Hawaii in a manner at least as favorable as the health care provided by this chapter, or upon the effective date of federal legislation that provides for mandatory prepaid health care for the people of Hawaii.

The legislature further finds that in 1993, the newly-installed Clinton administration launched health care reform onto the national agenda. Concerned that the federal law would jeopardize the quality of health care that people enjoyed in Hawaii because of the Hawaii Prepaid Health Care Act, the legislature enacted Act 99, Session Laws of Hawaii 1994, which repeals the Hawaii Prepaid Health Care Act's termination clause upon the effective date of any federal act permitting an amendment of the Hawaii Prepaid Health Care Act.

While the Clinton health care reform did not materialize, national health care reform finally became a reality with the enactment of the federal Patient Protection and Affordable Care Act in 2010. Although the Patient Protection and Affordable Care Act generally provides for individual and employer health

care coverage, it acknowledges the success of Hawaii's prepaid health care model by providing for the continuance of the Hawaii Prepaid Health Care Act in Section 1560(b) of the Patient Protection and Affordable Care Act, as follows:

Nothing in this title (or an amendment made by this title) shall be construed to modify or limit the application of the exemption for Hawaii's Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 et seq.) as provided for under section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(5)).

The legislature is supportive of the Patient Protection and Affordable Care Act and the efforts of the President and United States Congress to bring the nation closer to achieving universal health care. However, the legislature continues to believe that the Hawaii Prepaid Health Care Act provides superior benefits for the people of Hawaii, and the legislature is wary that current efforts to repeal or amend the federal Patient Protection and Affordable Care Act may jeopardize the Hawaii Prepaid Health Care Act. Therefore, the legislature believes it is imperative to eliminate all provisions for and references to the termination of the Hawaii Prepaid Health Care Act.

SECTION 2. Act 99, Session Laws of Hawaii 1994, is repealed.

SECTION 3. Chapter 393, part V, Hawaii Revised Statutes, is repealed.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 12, 2011.)

ACT 229

H.B. NO. 318

A Bill for an Act Relating to Vog.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. (a) There shall be established within the civil defense agency of a county with an active volcano from which vog emanates, the interagency task force on vog. The task force shall review the effects and impact of vog on human health, school children, agriculture, farm and ranch animals, public infrastructure, the visitor industry, and any other issue the task force deems necessary. The task force shall make recommendations to the legislature on addressing any issue the task force determines is feasible to address pursuant to this Act. The task force may adopt resolutions encompassing any issue being reviewed by the task force and may forward these resolutions to any federal, state, or county agency for appropriate action.

(b) The interagency task force on vog shall meet quarterly at a place and time to be determined by the chair of the task force. Meeting notices shall be posted by the task force as required under chapter 92, Hawaii Revised Statutes, and public testimony at meetings shall be accepted by the task force. The task force shall be dissolved on June 30, 2013.

(c) The civil defense agency of the county with an active volcano from which vog emanates shall provide administrative support, including the recording of minutes, to the interagency task force on vog.

(d) The administrator of the civil defense agency of the county with an active volcano from which vog emanates shall be the chair of the interagency task force on vog. The task force shall include the following members or their designees:

- (1) The director of health, or the director's designee;
- (2) The vice director of civil defense, department of defense;
- (3) The representative of the fourth representative district;
- (4) The representative of the fifth representative district;
- (5) The senator of the second senatorial district;
- (6) Hawaii county council members representing lower Puna and Kau;
- (7) The fire chief of the Hawaii county fire department;
- (8) A representative from the Hawaii district office of the department of education;
- (9) The chairperson of the east Hawaii regional board of the Hawaii health systems corporation;
- (10) The chairperson of the board of agriculture;
- (11) The chairperson of the board of land and natural resources;
- (12) The district health officer for the Hawaii district health office of the department of health;
- (13) The administrator of Kau hospital;
- (14) The executive director of the Hawaii Visitors and Convention Bureau for the island of Hawaii; and
- (15) The Hawaii district manager of the state department of transportation highways division.

The members of the task force shall serve without compensation, and all necessary expenses, including travel expenses, shall be paid by the agency, organization, or department to which the member belongs.

(e) The interagency task force on vog in conjunction with the state interagency task force on sulfur dioxide hazards shall submit a report that recommends measures and strategies to mitigate the effects of vog to the legislature no later than twenty days prior to the convening of the regular session of 2013.

SECTION 2. This Act shall take effect on July 1, 2011.

(Approved July 12, 2011.)

ACT 230

S.B. NO. 1274

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the purpose of this Act is to comply with the requirements of the Patient Protection and Affordable Care Act of 2010, Public Law No. 111-148, and its implementing regulations by updating Hawaii's Patients' Bill of Rights and Responsibilities Act, chapter 432E, Hawaii Revised Statutes, to conform to the requirements of the federal law.

SECTION 2. Chapter 432E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . EXTERNAL REVIEW OF HEALTH INSURANCE DETERMINATIONS

§432E-A Applicability and scope. (a) Except as provided in subsection (b), this part shall apply to all health carriers.

(b) This part shall not apply to a policy or certificate that provides coverage only for a specified disease, specified accident or accident-only coverage,

credit, dental, disability income, hospital indemnity, long-term care insurance, vision care, or any other limited supplemental benefit; to a medicare supplemental policy of insurance, coverage under a plan through medicare, medicaid, or the federal employees health benefits program, any federal medical and dental care coverage issued under chapter 55 of Title 10 United States Code and any coverage issued as supplemental to that coverage; any coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; automobile medical-payment insurance; any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis; or the employer union health benefits trust fund so long as it is self-funded.

§432E-B Notice of right to external review. Notice of the right to external review issued pursuant to this part shall set forth the options available to the enrollee under this part. The commissioner may specify the form and content of notice of external review.

§432E-C Request for external review. (a) All requests for external review of a health carrier's adverse action shall be made in writing to the commissioner and shall include:

- (1) A copy of the final internal determination of the health carrier, unless exempted pursuant to subsection (b);
- (2) A signed authorization by or on behalf of the enrollee for release of the enrollee's medical records relevant to the external review;
- (3) A disclosure for conflict of interests evaluation, as provided in section 432E-M; and
- (4) A filing fee of \$15, which shall be deposited into the compliance resolution fund established pursuant to section 26-9(o); provided that the filing fee shall be refunded if the adverse determination or final internal adverse determination is reversed through external review.

The commissioner shall waive the filing fee required by this subsection if the commissioner determines that payment of the fee would impose an undue financial hardship to the enrollee. The annual aggregate limit on filing fees for any enrollee within a single plan year shall not exceed \$60.

(b) The internal appeals process of a health carrier shall be completed before an external review request shall be submitted to the commissioner except in the following circumstances:

- (1) The health carrier has waived the requirement of exhaustion of the internal appeals process;
- (2) The enrollee has applied for an expedited external review at the same time that the enrollee applied for an expedited internal appeal; provided that the enrollee is eligible for an expedited external review; or
- (3) The health carrier has substantially failed to comply with its internal appeals process.

§432E-D Standard external review. (a) An enrollee or the enrollee's appointed representative may file a request for an external review with the commissioner within one hundred thirty days of receipt of notice of an adverse action. Within three business days after the receipt of a request for external review pursuant to this section, the commissioner shall send a copy of the request to the health carrier.

(b) Within five business days following the date of receipt of the copy of the external review request from the commissioner pursuant to subsection (a), the health carrier shall determine whether:

- (1) The individual is or was an enrollee in the health benefit plan at the time the health care service was requested or, in the case of a retrospective review, was an enrollee in the health benefit plan at the time the health care service was provided;
- (2) The health care service that is the subject of the adverse determination or the final adverse determination would be a covered service under the enrollee's health benefit plan but for a determination by the health carrier that the health care service does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness;
- (3) The enrollee has exhausted the health carrier's internal appeals process or the enrollee is not required to exhaust the health carrier's internal appeals process pursuant to section 432E-C(b); and
- (4) The enrollee has provided all the information and forms required to process an external review, including a completed release form and disclosure form as required by section 432E-C(a).

(c) Within three business days after a determination of an enrollee's eligibility for external review pursuant to subsection (b), the health carrier shall notify the commissioner, the enrollee, and the enrollee's appointed representative in writing as to whether the request is complete and whether the enrollee is eligible for external review.

If the request for external review submitted pursuant to this section is not complete, the health carrier shall inform the commissioner, the enrollee, and the enrollee's appointed representative in writing that the request is incomplete and shall specify the information or materials required to complete the request.

If the enrollee is not eligible for external review pursuant to subsection (b), the health carrier shall inform the commissioner, the enrollee, and the enrollee's appointed representative in writing that the enrollee is not eligible for external review and the reasons for ineligibility.

Notice of ineligibility for external review pursuant to this section shall include a statement informing the enrollee and the enrollee's appointed representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the commissioner by submission of a request to the commissioner.

(d) Upon receipt of a request for appeal pursuant to subsection (c), the commissioner shall review the request for external review submitted by the enrollee pursuant to subsection (a), determine whether an enrollee is eligible for external review and, if eligible, shall refer the enrollee to external review. The commissioner's determination of eligibility for external review shall be made in accordance with the terms of the enrollee's health benefit plan and all applicable provisions of this part. If an enrollee is not eligible for external review, the commissioner shall notify the enrollee, the enrollee's appointed representative, and the health carrier within three business days of the reason for ineligibility.

(e) When the commissioner receives notice pursuant to subsection (c) or makes a determination pursuant to subsection (d) that an enrollee is eligible for external review, within three business days after receipt of the notice or determination of eligibility, the commissioner shall:

- (1) Randomly assign an independent review organization from the list of approved independent review organizations qualified to conduct the external review, based on the nature of the health care service that is the subject of the adverse action and other factors deter-

mined by the commissioner including conflicts of interest pursuant to section 432E-M, compiled and maintained by the commissioner to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and

- (2) Notify the enrollee and the enrollee's appointed representative, in writing, of the enrollee's eligibility and acceptance for external review.

(f) An enrollee or an enrollee's appointed representative may submit additional information in writing to the assigned independent review organization for consideration in its external review. The independent review organization shall consider information submitted within five business days following the date of the enrollee's receipt of the notice provided pursuant to subsection (e). The independent review organization may accept and consider additional information submitted by an enrollee or an enrollee's appointed representative after five business days.

(g) Within five business days after the date of receipt of notice pursuant to subsection (e), the health carrier or its designated utilization review organization shall provide to the assigned independent review organization all documents and information it considered in issuing the adverse action that is the subject of external review. Failure by the health carrier or its utilization review organization to provide the documents and information within five business days shall not delay the conduct of the external review; provided that the assigned independent review organization may terminate the external review and reverse the adverse action that is the subject of the external review. The independent review organization shall notify the enrollee, the enrollee's appointed representative, the health carrier, and the commissioner within three business days of the termination of an external review and reversal of an adverse action pursuant to this subsection.

(h) The assigned independent review organization shall, within one business day of receipt by the independent review organization, forward all information received from the enrollee pursuant to subsection (f) to the health carrier. Upon receipt of information forwarded to it pursuant to this subsection, a health carrier may reconsider the adverse action that is the subject of the external review; provided that reconsideration by the health carrier shall not delay or terminate an external review unless the health carrier reverses its adverse action and provides coverage or payment for the health care service that is the subject of the adverse action. The health carrier shall notify the enrollee, the enrollee's appointed representative, the assigned independent review organization, and the commissioner in writing of its decision to reverse its adverse action within three business days of making its decision to reverse the adverse action and provide coverage. The assigned independent review organization shall terminate its external review upon receipt of notice pursuant to this subsection from the health carrier.

(i) In addition to the documents and information provided pursuant to subsections (f) and (g), the assigned independent review organization shall consider the following in reaching a decision:

- (1) The enrollee's medical records;
- (2) The attending health care professional's recommendation;
- (3) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, enrollee, enrollee's appointed representatives, or enrollee's treating provider;
- (4) The application of medical necessity as defined in section 432E-1;
- (5) The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any practice

- guidelines developed by the federal government or national or professional medical societies, boards, and associations;
- (6) Any applicable clinical review criteria developed and used by the health carrier or its designated utilization review organization; and
 - (7) The opinion of the independent review organization's clinical reviewer or reviewers pertaining to the information enumerated in paragraphs (1) through (5) to the extent the information or documents are available and the clinical reviewer or reviewers consider appropriate.

In reaching a decision, the assigned independent review organization shall not be bound by any decisions or conclusions reached during the health carrier's utilization review or internal appeals process; provided that the independent review organization's decision shall not contradict the terms of the enrollee's health benefit plan or this part.

(j) Within forty-five days after it receives a request for an external review pursuant to subsection (e), the assigned independent review organization shall notify the enrollee, the enrollee's appointed representative, the health carrier, and the commissioner of its decision to uphold or reverse the adverse action that is the subject of the internal review. The independent review organization shall include in the notice of its decision:

- (1) A general description of the reason for the request for external review;
- (2) The date the independent review organization received the assignment from the commissioner to conduct the external review;
- (3) The date the external review was conducted;
- (4) The date the decision was issued; and
- (5) The basis for the independent review organization's decision, including its reasoning, rationale, and the supporting evidence or documentation, including evidence-based standards, that the independent review organization considered in reaching its decision.

Upon receipt of a notice of a decision reversing the adverse action, the health carrier shall immediately approve the coverage that was the subject of the adverse action.

§432E-E Expedited external review. (a) Except as provided in subsection (i), an enrollee or the enrollee's appointed representative may request an expedited external review with the commissioner if the enrollee receives:

- (1) An adverse determination that involves a medical condition of the enrollee for which the timeframe for completion of an expedited internal appeal would seriously jeopardize the enrollee's life, health, or ability to gain maximum functioning or would subject the enrollee to severe pain that cannot be adequately managed without the care or treatment that is the subject of the adverse determination;
- (2) A final adverse determination if the enrollee has a medical condition where the timeframe for completion of a standard external review would seriously jeopardize the enrollee's ability to gain maximum functioning, or would subject the enrollee to severe pain that cannot be adequately managed without the care or treatment that is the subject of the adverse determination; or
- (3) A final adverse determination if the final adverse determination concerns an admission, availability of care, continued stay, or health care service for which the enrollee received emergency services; provided that the enrollee has not been discharged from a facility for health care services related to the emergency services.

(b) Upon receipt of a request for an expedited external review, the commissioner shall immediately send a copy of the request to the health carrier. Immediately upon receipt of the request, the health carrier shall determine whether the request meets the reviewability requirements set forth in subsection (a). The health carrier shall immediately notify the enrollee or the enrollee's appointed representative of its determination of the enrollee's eligibility for expedited external review.

Notice of ineligibility for expedited external review shall include a statement informing the enrollee and the enrollee's appointed representative that a health carrier's initial determination that an external review request that is ineligible for review may be appealed to the commissioner by submission of a request to the commissioner.

(c) Upon receipt of a request for appeal pursuant to subsection (b), the commissioner shall review the request for expedited external review submitted pursuant to subsection (a) and, if eligible, shall refer the enrollee for external review. The commissioner's determination of eligibility for expedited external review shall be made in accordance with the terms of the enrollee's health benefit plan and all applicable provisions of this part. If an enrollee is not eligible for expedited external review, the commissioner shall immediately notify the enrollee, the enrollee's appointed representative, and the health carrier of the reasons for ineligibility.

(d) If the commissioner determines that an enrollee is eligible for expedited external review even though the enrollee has not exhausted the health carrier's internal review process, the health carrier shall not be required to proceed with its internal review process. The health carrier may elect to proceed with its internal review process even though the request is determined by the commissioner to be eligible for expedited external review; provided that the internal review process shall not delay or terminate an expedited external review unless the health carrier decides to reverse its adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination. Immediately after making a decision to reverse its adverse determination, the health carrier shall notify the enrollee, the enrollee's authorized representative, the independent review organization assigned pursuant to subsection (c), and the commissioner in the writing of its decision. The assigned independent review organization shall terminate the expedited external review upon receipt of notice from the health carrier pursuant to this subsection.

(e) Upon receipt of the notice pursuant to subsection (a) or a determination of the commissioner pursuant to subsection (c) that the enrollee meets the eligibility requirements for expedited external review, the commissioner shall immediately randomly assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations qualified to conduct the external review, based on the nature of the health care service that is the subject of the adverse action and other factors determined by the commissioner including conflicts of interest pursuant to section 432E-M, compiled and maintained by the commissioner to conduct the external review and immediately notify the health carrier of the name of the assigned independent review organization.

(f) Upon receipt of the notice from the commissioner of the name of the independent review organization assigned to conduct the expedited external review, the health carrier or its designee utilization review organization shall provide or transmit all documents and information it considered in making the adverse action that is the subject of the expedited external review to the assigned independent review organization electronically or by telephone, facsimile, or any other available expeditious method.

(g) In addition to the documents and information provided or transmitted pursuant to subsection (f), the assigned independent review organization shall consider the following in reaching a decision:

- (1) The enrollee's pertinent medical records;
- (2) The attending health care professional's recommendation;
- (3) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, enrollee, the enrollee's appointed representative, or the enrollee's treating provider;
- (4) The application of medical necessity criteria as defined in section 432E-1;
- (5) The most appropriate practice guidelines, which shall include evidence-based standards, and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, and associations;
- (6) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization in making adverse determinations; and
- (7) The opinion of the independent review organization's clinical reviewer or reviewers pertaining to the information enumerated in paragraphs (1) through (5) to the extent the information and documents are available and the clinical reviewer or reviewers consider appropriate.

In reaching a decision, the assigned independent review organization shall not be bound by any decisions or conclusions reached during the health carrier's utilization review or internal appeals process; provided that the independent review organization's decision shall not contradict the terms of the enrollee's health benefit plan or this part.

(h) As expeditiously as the enrollee's medical condition or circumstances requires, but in no event more than seventy-two hours after the date of receipt of the request for an expedited external review that meets the reviewability requirements set forth in subsection (a), the assigned independent review organization shall:

- (1) Make a decision to uphold or reverse the adverse action; and
- (2) Notify the enrollee, the enrollee's appointed representative, the health carrier, and the commissioner of the decision.

If the notice provided pursuant to this subsection was not in writing, within forty-eight hours after the date of providing that notice, the assigned independent review organization shall provide written confirmation of the decision to the enrollee, the enrollee's appointed representative, the health carrier, and the commissioner that includes the information provided in section 432E-G.

Upon receipt of the notice of a decision reversing the adverse action, the health carrier shall immediately approve the coverage that was the subject of the adverse action.

(i) An expedited external review shall not be provided for retrospective adverse or final adverse determinations.

§432E-F External review of experimental or investigational treatment adverse determinations. (a) An enrollee or an enrollee's appointed representative may file a request for an external review with the commissioner within one hundred thirty days of receipt of notice of an adverse action that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational.

(b) An enrollee or the enrollee's appointed representative may make an oral request for an expedited external review of the adverse action if the en-

rollee's treating physician certifies, in writing, that the health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated. A written request for an expedited external review pursuant to this subsection shall include, and oral request shall be promptly followed by, a certification signed by the enrollee's treating physician and the authorization for release and disclosures required by section 432E-C. Upon receipt of all items required by this subsection, the commissioner shall immediately notify the health carrier.

(c) Upon notice of the request for expedited external review, the health carrier shall immediately determine whether the request meets the requirements of subsection (b). The health carrier shall immediately notify the commissioner, the enrollee, and the enrollee's appointed representative of its eligibility determination.

Notice of eligibility for expedited external review pursuant to this subsection shall include a statement informing the enrollee and, if applicable, the enrollee's appointed representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the commissioner.

(d) Upon receipt of a request for appeal pursuant to subsection (c), the commissioner shall review the request for external review submitted by the enrollee pursuant to subsection (a), determine whether an enrollee is eligible for external review and, if eligible, shall refer the enrollee to external review. The commissioner's determination of eligibility for external review shall be made in accordance with the terms of the enrollee's health benefit plan and all applicable provisions of this part. If an enrollee is not eligible for external review, the commissioner shall notify the enrollee, the enrollee's appointed representative, and the health carrier of the reason for ineligibility within three business days.

(e) Upon receipt of the notice pursuant to subsection (a) or a determination of the commissioner pursuant to subsection (d) that the enrollee meets the eligibility requirements for expedited external review, the commissioner shall immediately randomly assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations qualified to conduct the external review, based on the nature of the health care service that is the subject of the adverse action and other factors determined by the commissioner including conflicts of interest pursuant to section 432E-M, compiled and maintained by the commissioner to conduct the external review and immediately notify the health carrier of the name of the assigned independent review organization.

(f) Upon receipt of the notice from the commissioner of the name of the independent review organization assigned to conduct the expedited external review, the health carrier or its designee utilization review organization shall provide or transmit all documents and information it considered in making the adverse action that is the subject of the expedited external review to the assigned independent review organization electronically or by telephone, facsimile, or any other available expeditious method.

(g) Except for a request for an expedited external review made pursuant to subsection (b), within three business days after the date of receipt of the request, the commissioner shall notify the health carrier that the enrollee has requested an expedited external review pursuant to this section. Within five business days following the date of receipt of notice, the health carrier shall determine whether:

- (1) The individual is or was an enrollee in the health benefit plan at the time the health care service or treatment was recommended or requested or, in the case of a retrospective review, was an enrollee

- in the health benefit plan at the time the health care service or treatment was provided;
- (2) The recommended or requested health care service or treatment that is the subject of the adverse action:
 - (A) Would be a covered benefit under the enrollee's health benefit plan but for the health carrier's determination that the service or treatment is experimental or investigational for the enrollee's particular medical condition; and
 - (B) Is not explicitly listed as an excluded benefit under the enrollee's health benefit plan;
 - (3) The enrollee's treating physician has certified in writing that:
 - (A) Standard health care services or treatments have not been effective in improving the condition of the enrollee;
 - (B) Standard health care services or treatments are not medically appropriate for the enrollee; or
 - (C) There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the health care service or treatment that is the subject of the adverse action;
 - (4) The enrollee's treating physician:
 - (A) Has recommended a health care service or treatment that the physician certifies, in writing, is likely to be more beneficial to the enrollee, in the physician's opinion, than any available standard health care services or treatments; or
 - (B) Who is a licensed, board certified or board eligible physician qualified to practice in the area of medicine appropriate to treat the enrollee's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment that is the subject of the adverse action is likely to be more beneficial to the enrollee than any available standard health care services or treatments;
 - (5) The enrollee has exhausted the health carrier's internal appeals process or the enrollee is not required to exhaust the health carrier's internal appeals process pursuant to section 432E-C(b); and
 - (6) The enrollee has provided all the information and forms required by the commissioner that are necessary to process an external review, including the release form and disclosure of conflict of interest information as provided under section 432E-5.
- (h) Within three business days after determining the enrollee's eligibility for external review pursuant to subsection (g), the health carrier shall notify the commissioner, the enrollee, and the enrollee's appointed representative in writing as to whether the request is complete and eligible for external review.

If the request is not complete, the health carrier shall inform the commissioner, the enrollee, and the enrollee's appointed representative in writing of the information or materials needed to complete the request.

If the enrollee is not eligible for external review pursuant to subsection (g), the health carrier shall inform the commissioner, the enrollee, and the enrollee's appointed representative in writing of the ineligibility and the reasons for ineligibility.

Notice of ineligibility pursuant to this subsection shall include a statement informing the enrollee and the enrollee's appointed representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the commissioner by submitting a request to the commissioner.

If a request for external review is determined eligible for external review, the health carrier shall notify the commissioner and the enrollee and, if applicable, the enrollee's appointed representative.

(i) Upon receipt of a request for appeal pursuant to subsection (h), the commissioner shall review the request for external review submitted pursuant to subsection (a) and, if eligible, shall refer the enrollee for external review. The commissioner's determination of eligibility for expedited external review shall be made in accordance with the terms of the enrollee's health benefit plan and all applicable provisions of this part. If an enrollee is not eligible for external review, the commissioner shall notify the enrollee, the enrollee's appointed representative, and the health carrier of the reasons for ineligibility within three business days.

(j) When the commissioner receives notice pursuant to subsection (h) or makes a determination pursuant to subsection (i) that an enrollee is eligible for external review, within three business days after receipt of the notice or determination of eligibility, the commissioner shall:

- (1) Randomly assign an independent review organization from the list of approved independent review organizations qualified to conduct the external review, based on the nature of the health care service that is the subject of the adverse action and other factors determined by the commissioner including conflicts of interest pursuant to section 432E-M, compiled and maintained by the commissioner pursuant to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and
- (2) Notify the enrollee and the enrollee's appointed representative, in writing, of the enrollee's eligibility and acceptance for external review.

(k) An enrollee or an enrollee's appointed representative may submit additional information in writing to the assigned independent review organization for consideration in its external review. The independent review organization shall consider information submitted within five business days following the date of the enrollee's receipt of the notice provided pursuant to subsection (j). The independent review organization may accept and consider additional information submitted by an enrollee after five business days.

(l) Within five business days after the date of receipt of notice pursuant to subsection (j), the health carrier or its designated utilization review organization shall provide to the assigned independent review organization all documents and information it considered in issuing the adverse action that is the subject of external review. Failure by the health carrier or its utilization review organization to provide the documents and information within five business days shall not delay the conduct of the external review; provided that the assigned independent review organization may terminate the external review and reverse the adverse action that is the subject of the external review. The independent review organization shall notify the enrollee, the enrollee's appointed representative, the health carrier, and the commissioner within three business days of the termination of an external review and reversal of an adverse action pursuant to this subsection.

(m) Within three business days after the receipt of the notice of assignment to conduct the external review pursuant to subsection (j), the assigned independent review organization shall:

- (1) Select one or more clinical reviewers who each shall be a physician or other health care professional who meets the minimum qualifications described in section 432E-I and, through clinical experience in

the past three years, is an expert in the treatment of the enrollee's condition and knowledgeable about the recommended or requested health care service or treatment to conduct the external review; provided that neither the enrollee, the enrollee's appointed representative, nor the health carrier shall choose or control the choice of the physicians or other health care professionals to be selected to conduct the external review; and

- (2) Based on the written opinion of the clinical reviewer, or opinions if more than one clinical reviewer has been selected, to the assigned independent review organization on whether the recommended or requested health care service or treatment should be covered, make a determination to uphold or reverse the adverse action.

In reaching an opinion, the clinical reviewers are not bound by any decisions or conclusions reached during the health carrier's utilization review process or internal appeals process.

Each clinical reviewer selected pursuant to this subsection shall review all of the information and documents received pursuant to subsection (l) and any other information submitted in writing by the enrollee or the enrollee's authorized representative pursuant to this subsection.

(n) The assigned independent review organization, within one business day of receipt by the independent review organization, shall forward all information received from the enrollee pursuant to subsection (k) to the health carrier. Upon receipt of information forwarded to it pursuant to this subsection, a health carrier may reconsider the adverse action that is the subject of the external review; provided that reconsideration by the health carrier shall not delay or terminate an external review unless the health carrier reverses its adverse action and provides coverage or payment for the health care service that is the subject of the adverse action. The health carrier shall notify the enrollee, the enrollee's appointed representative, the assigned independent review organization, and the commissioner in writing of its decision to reverse its adverse action and within three business days of making its decision to reverse the adverse action and provide coverage. The assigned independent review organization shall terminate its external review upon receipt of notice pursuant to this subsection from the health carrier.

(o) Except as provided in subsection (p), within twenty days after being selected to conduct the external review, a clinical reviewer shall provide an opinion to the assigned independent review organization pursuant to subsection (q) regarding whether the recommended or requested health care service or treatment subject to an appeal pursuant to this section shall be covered.

The clinical reviewers' opinion shall be in writing and shall include:

- (1) A description of the enrollee's medical condition;
- (2) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is more likely than not to be more beneficial to the enrollee than any available standard health care services or treatments and whether the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments;
- (3) A description and analysis of any medical or scientific evidence, as that term is defined in section 432E-1.4, considered in reaching the opinion;
- (4) A description and analysis of any medical necessity criteria defined in section 432E-1; and

- (5) Information on whether the reviewer's rationale for the opinion is based on approval of the health care service or treatment by the federal Food and Drug Administration for the condition or medical or scientific evidence or evidence-based standards that demonstrate that the expected benefits of the recommended or requested health care service or treatment is likely to be more beneficial to the enrollee than any available standard health care services or treatments and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments.

(p) Notwithstanding the requirements of subsection (o), in an expedited external review, the clinical reviewer shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the enrollee's medical condition or circumstances require, but in no event more than five calendar days after being selected in accordance with subsection (m).

If the opinion provided pursuant to this subsection was not in writing, within forty-eight hours following the date the opinion was provided, the clinical reviewer shall provide written confirmation of the opinion to the assigned independent review organization and include the information required under subsection (o).

(q) In addition to the documents and information provided pursuant to subsection (b) or (l), a clinical reviewer may consider the following in reaching an opinion pursuant to subsection (o):

- (1) The enrollee's pertinent medical records;
- (2) The attending physician's or health care professional's recommendation;
- (3) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, enrollee, the enrollee's appointed representative, or the enrollee's treating physician or health care professional; and
- (4) Whether:
 - (A) The recommended health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or
 - (B) Medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is more likely than not to be beneficial to the enrollee than any available standard health care service or treatment and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments;

provided that the independent review organization's decision shall not contradict the terms of the enrollee's health benefit plan or the provisions of this chapter.

(r) Except as provided in subsection (s), within twenty days after the date it receives the opinion of the clinical reviewer pursuant to subsection (o), the assigned independent review organization, in accordance with subsection (t), shall determine whether the health care service at issue in an external review pursuant to this section shall be a covered benefit and shall notify the enrollee, the enrollee's appointed representative, the health carrier, and the commissioner of its determination. The independent review organization shall include in the notice of its decision:

- (1) A general description of the reason for the request for external review;

- (2) The written opinion of each clinical reviewer, including the recommendation of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation;
- (3) The date the independent review organization was assigned by the commissioner to conduct the external review;
- (4) The date the external review was conducted;
- (5) The date the decision was issued;
- (6) The principal reason or reasons for its decision; and
- (7) The rationale for its decision.

Upon receipt of a notice of a decision reversing the adverse action, the health carrier immediately shall approve coverage of the recommended or requested health care service or treatment that was the subject of the adverse action.

(s) For an expedited external review, within forty-eight hours after the date it receives the opinion of each clinical reviewer, the assigned independent review organization, in accordance with subsection (t), shall make a decision and provide notice of the decision orally or in writing to the enrollee, the enrollee's appointed representative, the health carrier, and the commissioner.

If the notice provided was not in writing, within forty-eight hours after the date of providing that notice, the assigned independent review organization shall provide written confirmation of the decision to the enrollee, the enrollee's appointed representative, the health carrier, and the commissioner.

(t) If a majority of the clinical reviewers recommends that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health carrier's adverse determination or final adverse determination.

If a majority of the clinical reviewers recommends that the recommended or requested health care service or treatment should not be covered, the independent review organization shall make a decision to uphold the health carrier's adverse determination or final adverse determination.

If the clinical reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical reviewer in order for the independent review organization to make a decision based on the opinions of a majority of the clinical reviewers. The additional clinical reviewer shall use the same information to reach an opinion as the clinical reviewers who have already submitted their opinions. The selection of the additional clinical reviewer shall not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical reviewers selected.

§432E-G Binding nature of external review decision. (a) An external review decision shall be binding on the health carrier and the enrollee except to the extent that the health carrier or the enrollee has other remedies available under applicable federal or state law.

(b) An enrollee or the enrollee's appointed representative shall not file a subsequent request for external review involving the same adverse action for which the enrollee has already received an external review decision pursuant to this part.

§432E-H Approval of independent review organizations. (a) An independent review organization shall be approved by the commissioner in order to be eligible to be assigned to conduct external reviews under this part.

(b) To be eligible for approval by the commissioner to conduct external reviews under this part an independent review organization shall:

- (1) Submit an application on a form required by the commissioner and include all documentation and information necessary for the commissioner to determine if the independent review organization satisfies the minimum qualifications established under this part; and
- (2) Except as otherwise provided in subsection (c), shall be accredited by a nationally-recognized private accrediting entity that the commissioner has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum standards established by this section and section 432E-I.

(c) The commissioner may approve independent review organizations that are not accredited by a nationally-recognized private accrediting entity if there are no acceptable nationally-recognized private accrediting entities providing independent review organization accreditation.

(d) The commissioner may charge an application fee that the independent review organizations shall submit to the commissioner with an application for approval and re-approval.

(e) Approval pursuant to this section is effective for two years, unless the commissioner determines before its expiration that the independent review organization does not meet the minimum qualifications established under this part. If the commissioner determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements of this part, the commissioner shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations approved to conduct external reviews maintained by the commissioner.

(f) The commissioner shall maintain and periodically update a list of approved independent review organizations.

§432E-I Minimum qualifications for independent review organizations.

(a) To be eligible for approval under this part to conduct external reviews, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in this part that include, at minimum:

- (1) A quality assurance mechanism in place that ensures:
 - (A) That external reviews are conducted within the specified time frames of this part and required notices are provided in a timely manner;
 - (B) The selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases; provided that an independent review organization shall employ or contract with an adequate number of clinical reviewers to meet this objective;
 - (C) Confidentiality of medical and treatment records and clinical review criteria; and
 - (D) That any person employed by or under contract with the independent review organization complies with the requirements of this part;
- (2) Toll-free telephone, facsimile, and email capabilities to receive information related to external reviews twenty-four hours a day, seven days per week that are capable of accepting, recording, or providing

appropriate instruction to incoming telephone callers during other than normal business hours and facilitating necessary communication under this part; and

(3) An agreement to maintain and provide to the commissioner the information required by this part.

(b) Each clinical reviewer assigned by an independent review organization to conduct an external review shall be a physician or other appropriate health care provider who:

(1) Is an expert in the treatment of the medical condition that is the subject of the external review;

(2) Is knowledgeable about the recommended health care service and treatment through recent or current actual clinical experience treating patients with the same or similar medical condition at issue in the external review;

(3) Holds a non-restricted license in a state of the United States and, for physicians, a current certification by a recognized American Medical Specialty Board in the area or areas appropriate to the subject of the external review; and

(4) Has no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, imposed or pending by any hospital, governmental agency or unit, or regulatory body that raises a substantial question as to the clinical reviewer's physical, mental, or professional competence or moral character.

(c) An independent review organization shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control over a health carrier, health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

(d) To be eligible to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor any clinical reviewer assigned by the independent review organization to conduct the external review shall have a material professional, familial, or financial conflict of interest with any of the following:

(1) The health carrier that is the subject of the external review;

(2) The enrollee whose treatment is the subject of the external review, the enrollee's appointed representative, or the enrollee's immediate family;

(3) Any officer, director, or management employee of the health carrier that is the subject of the external review;

(4) The health care provider, the health care provider's medical group, or independent practice association recommending the health care service or treatment that is the subject of the external review;

(5) The facility at which the recommended health care service or treatment would be provided;

(6) The developer or manufacturer of the principal drug, device, procedure, or other therapy recommended for the enrollee whose treatment is the subject of the external review; or

(7) The health benefit plan that is the subject of the external review, the plan administrator, or any fiduciary or employee of the plan.

The commissioner may determine that no material professional, familial, or financial conflict of interest exists based on the specific characteristics of a particular relationship or connection that creates an apparent professional, familial, or financial conflict of interest.

(e) An independent review organization that is accredited by a nationally-recognized private accrediting entity that has independent review accreditation standards that the commissioner has determined are equivalent to or exceed the minimum qualifications of this section shall be presumed to be in compliance with this section to be eligible for approval under this part.

The commissioner shall review, initially upon approval of an accredited independent review organization and periodically during the time that the independent review organization remains approved pursuant to this section, the accreditation standards of the nationally-recognized private accrediting entity to determine whether the entity's standards are, and continue to be equivalent to, or exceed the minimum qualifications established under this section; provided that a review conducted by the National Association of Insurance Commissioners shall satisfy the requirements of this section.

Upon request of the commissioner, a nationally-recognized private accrediting entity shall make its current independent review organization accreditation standards available to the commissioner or the National Association of Insurance Commissioners in order for the commissioner to determine if the entity's standards are equivalent to or exceed the minimum qualifications established under this section. The commissioner may exclude any private accrediting entity that is not reviewed by the National Association of Insurance Commissioners.

(f) An independent review organization shall establish and maintain written procedures to ensure that it is unbiased in addition to any other procedures required under this section.

§432E-J Hold harmless for independent review organizations. No independent review organization or clinical reviewer working on behalf of an independent review organization or an employee, agent, or contractor of an independent review organization shall be liable in damages to any person for any opinions rendered or acts or omissions performed within the scope of the organization's or person's duties under the law during or upon completion of an external review conducted pursuant to this part, unless the opinion was rendered or the act or omission was performed in bad faith or involved gross negligence.

§432E-K External review reporting requirements. (a) An independent review organization assigned pursuant to this part to conduct an external review shall maintain written records in the aggregate by state and by health carrier on all requests for external review for which it conducted an external review during a calendar year and upon request shall submit a report to the commissioner, as required under subsection (b).

(b) Each independent review organization required to maintain written records on all requests for external review pursuant to subsection (a) for which it was assigned to conduct an external review shall submit to the commissioner, upon request, a report in the format specified by the commissioner. The report shall include in the aggregate by state, and for each health carrier:

- (1) The total number of requests for external review;
- (2) The number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse action and the number resolved reversing the adverse action;
- (3) The average length of time for resolution;
- (4) The summary of the types of coverages or cases for which an external review was sought, as provided in the format required by the commissioner;

- (5) The number of external reviews that were terminated as the result of a reconsideration by the health carrier of its adverse action after the receipt of additional information from the enrollee or the enrollee's appointed representative; and
- (6) Any other information the commissioner may request or require.

The independent review organization shall retain the written records required pursuant to this subsection for at least three years.

(c) Each health carrier shall maintain written records in the aggregate, by state and for each type of health benefit plan offered by the health carrier on all requests for external review that the health carrier receives notice of from the commissioner pursuant to this part.

Each health carrier required to maintain written records on all requests for external review shall submit to the commissioner, upon request, a report in the format specified by the commissioner that includes in the aggregate, by state, and by type of health benefit plan:

- (1) The total number of requests for external review;
- (2) From the total number of requests for external review reported, the number of requests determined eligible for a full external review; and
- (3) Any other information the commissioner may request or require.

The health carrier shall retain the written records required pursuant to this subsection for at least three years.

§432E-L Funding of external review. The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the cost of the independent review organization for conducting the external review. There shall be no recourse against the commissioner for the cost of conducting the external review and the selection of an independent review organization shall not be subject to chapter 103D; provided that the commissioner may initially approve up to three independent review organizations to serve beginning on the effective date of this part until the initial procurement process is completed; provided further that in any year in which procurement subject to chapter 103D does not produce at least three independent review organizations eligible for selection under section 432E-I, the commissioner may approve up to three independent review organizations notwithstanding the requirements of chapter 103D.

§432E-M Disclosure requirements. (a) Each health carrier shall include a description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage it provides to enrollees.

(b) Disclosure shall be in a format prescribed by the commissioner and shall include a statement informing the enrollee of the right of the enrollee to file a request for an external review of an adverse action with the commissioner. The statement may explain that external review is available when the adverse action involves an issue of medical necessity, appropriateness, health care setting, level of care, or effectiveness. The statement shall include the telephone number and address of the commissioner.

(c) In addition to the requirements of subsection (b), the statement shall inform the enrollee that, when filing a request for an external review, the enrollee or the enrollee's appointed representative shall be required to authorize the release of any medical records of the enrollee that may be required to be reviewed for the purpose of reaching a decision on the external review and shall be required to provide written disclosures to permit the commissioner to perform a

conflict of interest evaluation for selection of an appropriate independent review organization.

(d) Each health carrier shall have available on its website and provide upon request to any enrollee, forms for the purpose of requesting an external review, which shall include an authorization release form that complies with the federal Health Insurance Portability and Accountability Act as well as a disclosure form for conflict of interest evaluation purposes that shall include the name of the enrollee, any authorized representative acting on behalf of the enrollee, the enrollee's immediate family members, the health carrier that is the subject of the external review, the health benefit plan, the plan administrator, plan fiduciaries and plan employees if the enrollee is in a group health benefits plan, the health care providers treating the enrollee for purposes of the condition that is the subject of the external review and the providers' medical groups, the health care provider and facility at which the requested health care service or treatment would be provided, and the developer or manufacturer of the principal drug, device, procedure, or other therapy that is the subject of the external review request.

(e) Each health carrier doing business in Hawaii shall file with the commissioner by the effective date of this part, information to permit the commissioner to perform a conflict of interest evaluation for selection of an appropriate independent review organization in the event of a request for external review involving the health carrier. A filing pursuant to this section shall include the name of the health carrier, its officers, directors, and management employees. The health carrier shall promptly amend its filing with the commissioner when there is any change of officers, directors, or managing employees.

(f) The commissioner may prescribe the form or format to use for the release authorization required by subsection (d) and the conflict of interest disclosures required by subsections (d) and (e).

(g) No disclosure required for purposes of this part shall include lawyer-client privileged communications protected pursuant to the Hawaii Rules of Evidence Rule 503.

§432E-N Rules. The insurance commissioner shall adopt rules pursuant to chapter 91 to effectuate the purpose of this part including requirements for forms to request external review and expedited external review, to request approval by independent review organizations, and for disclosure of conflicts of interest by enrollees and health carriers."

SECTION 3. Chapter 432E, Hawaii Revised Statutes, is amended by designating sections 432E-1 through 432E-2 as part I, entitled "General Provisions".

SECTION 4. Chapter 432E, Hawaii Revised Statutes, is amended by designating sections 432E-3 through 432E-8 as part II, entitled "General Policies".

SECTION 5. Chapter 432E, Hawaii Revised Statutes, is amended by designating sections 432E-9 through 432E-13 as part III, entitled "Reporting and Other Provisions".

SECTION 6. Section 432E-1, Hawaii Revised Statutes, is amended to read as follows:

"§432E-1 Definitions. As used in this chapter, unless the context otherwise requires:

“Adverse action” means an adverse determination or a final adverse determination.

“Adverse determination” means a determination by a health carrier or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier’s requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefore denied, reduced, or terminated.

“Ambulatory review” means a utilization review of health care services performed or provided in an outpatient setting.

“Appeal” means a request from an enrollee to change a previous decision made by the ~~[managed care plan.]~~ health carrier.

“Appointed representative” means a person who is expressly permitted by the enrollee or who has the power under Hawaii law to make health care decisions on behalf of the enrollee, including:

- (1) A person to whom an enrollee has given express written consent to represent the enrollee in an external review;
- (2) A person authorized by law to provide substituted consent for an enrollee;
- (3) A family member of the enrollee or the enrollee’s treating health care professional, only when the enrollee is unable to provide consent;
- ~~(4)~~ (4) A court-appointed legal guardian;
- ~~(2)~~ (5) A person who has a durable power of attorney for health care;
or
- ~~(3)~~ (6) A person who is designated in a written advance directive[-];
provided that an appointed representative shall include an “authorized representative” as used in the federal Patient Protection and Affordable Care Act.

“Best evidence” means evidence based on:

- (1) Randomized clinical trials;
- (2) If randomized clinical trials are not available, cohort studies or case-control studies;
- (3) If the trials in paragraphs (1) and (2) are not available, case-series;
or
- (4) If the sources of information in paragraphs (1), (2), and (3) are not available, expert opinion.

“Case management” means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

“Case-control study” means a prospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received.

“Case-series” means an evaluation of patients with a particular outcome, without the use of a control group.

“Certification” means a determination by a health carrier or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the health carrier’s requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness.

“Clinical review criteria” means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services.

“Cohort study” means a prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention.

“Commissioner” means the insurance commissioner.

“Complaint” means an expression of dissatisfaction, either oral or written.

“Concurrent review” means a utilization review conducted during a patient’s hospital stay or course of treatment.

“Covered benefits” or “benefits” means those health care services to which an enrollee is entitled under the terms of a health benefit plan.

“Discharge planning” means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that an enrollee receives following discharge from a facility.

“Disclose” means to release, transfer, or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information.

“Emergency services” means services provided to an enrollee when the enrollee has symptoms of sufficient severity that a layperson could reasonably expect, in the absence of medical treatment, to result in placing the enrollee’s health or condition in serious jeopardy, serious impairment of bodily functions, serious dysfunction of any bodily organ or part, or death.

“Enrollee” means a person who enters into a contractual relationship under or who is provided with health care services or benefits through a [managed care plan.] health benefit plan.

~~“Expedited appeal” means the internal review of a complaint or an external review of the final internal determination of an enrollee’s complaint, which is completed within seventy-two hours after receipt of the request for expedited appeal.~~

~~“External review” means an administrative review requested by an enrollee under section 432E-6 of a managed care plan’s final internal determination of an enrollee’s complaint.]~~

“Evidence-based standard” means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

“Expert opinion” means a belief or interpretation by specialists with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy.

“External review” means a review of an adverse determination (including a final adverse determination) conducted by an independent review organization pursuant to this chapter.

“Facility” means an institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings.

“Final adverse determination” means an adverse determination involving a covered benefit that has been upheld by a health carrier or its designated utilization review organization at the completion of the health carrier’s internal grievance process procedures, or an adverse determination with respect to which the internal appeals process is deemed to have been exhausted under section 432E-C(b).

“Health benefit plan” means a policy, contract, certificate or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay or reimburse any of the costs of health care services.

“Health care [provider?] professional” means an individual licensed, accredited, or certified to provide or perform specified health care services in the

ordinary course of business or practice of a profession[~~-~~] consistent with state law.

“Health care provider” or “provider” means a health care professional.

“Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

“Health carrier” means an entity subject to the insurance laws and rules of this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a mutual benefit society, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health care services.

“Health maintenance organization” means a health maintenance organization as defined in section 432D-1.

“Independent review organization” means an independent entity [that:

- (1) Is unbiased and able to make independent decisions;
- (2) Engages adequate numbers of practitioners with the appropriate level and type of clinical knowledge and expertise;
- (3) Applies evidence-based decisionmaking;
- (4) Demonstrates an effective process to screen external reviews for eligibility;
- (5) Protects the enrollee’s identity from unnecessary disclosure; and
- (6) Has effective systems in place to conduct a review.]

that conducts independent external reviews of adverse determinations and final adverse determinations.

“Internal review” means the review under section 432E-5 of an enrollee’s complaint by a ~~[managed care plan.]~~ health carrier.

“Managed care plan” means any plan, policy, contract, certificate, or agreement, regardless of form, offered or administered by any person or entity, including but not limited to an insurer governed by chapter 431, a mutual benefit society governed by chapter 432, a health maintenance organization governed by chapter 432D, a preferred provider organization, a point of service organization, a health insurance issuer, a fiscal intermediary, a payor, a prepaid health care plan, and any other mixed model, that provides for the financing or delivery of health care services or benefits to enrollees through:

- (1) Arrangements with selected providers or provider networks to furnish health care services or benefits; and
- (2) Financial incentives for enrollees to use participating providers and procedures provided by a plan;

provided[~~;~~] that for the purposes of this chapter, an employee benefit plan shall not be deemed a managed care plan with respect to any provision of this chapter or to any requirement or rule imposed or permitted by this chapter [which] that is superseded or preempted by federal law.

“Medical director” means the person who is authorized under a ~~[managed care plan.]~~ health carrier and who makes decisions for the ~~[plan]~~ health carrier denying or allowing payment for medical treatments, services, or supplies based on medical necessity or other appropriate medical or health plan benefit standards.

“Medical necessity” means a health intervention [as defined] that meets the criteria enumerated in section 432E-1.4.

“Medical or scientific evidence” means evidence found in the following sources:

- (1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally-recognized re-

- quirements for scientific manuscripts and that submit most of their published articles for review by experts, who are not part of the editorial staff;
- (2) Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's National Library of Medicine for indexing in Index Medicus and Elsevier Science Ltd. for indexing in Excerpta Medicas;
 - (3) Medical journals recognized by the United States Secretary of Health and Human Services under Section 1861(t)(2) of the federal Social Security Act;
 - (4) The following standard reference compendia:
 - (A) The American Hospital Formulary Service-Drug Information;
 - (B) Drug Facts and Comparisons;
 - (C) The American Dental Association Accepted Dental Therapeutics; and
 - (D) The United States Pharmacopeia Drug Information;
 - (5) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally-recognized federal research institutes, including:
 - (A) The federal Agency for Healthcare Research and Quality;
 - (B) The National Institutes of Health;
 - (C) The National Cancer Institute;
 - (D) The National Academy of Sciences;
 - (E) The Centers for Medicare and Medicaid Services;
 - (F) The federal Food and Drug Administration; and
 - (G) Any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health care services; or
 - (6) Any other medical or scientific evidence that is comparable to the sources listed in paragraphs (1) through (5).

"Participating provider" means a licensed or certified provider of health care services or benefits, including mental health services and health care supplies, [that] who has entered into an agreement with a [managed-care-plan] health carrier to provide those services or supplies to enrollees.

"Prospective review" means utilization review conducted prior to an admission or a course of treatment.

"Protected health information" means health information as defined in the federal Health Insurance Portability and Accountability Act and related federal rules.

"Randomized clinical trial" means a controlled, prospective study of patients who have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time.

"Retrospective review" means a review of medical necessity conducted after services that have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

"Reviewer" means an independent reviewer with clinical expertise either employed by or contracted by an independent review organization to perform external reviews.

“Second opinion” means an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service.

“Specifically excluded” means that the coverage provisions of the health care plan, when read together, clearly and specifically exclude coverage for a health care service.

“Utilization review” means a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.

“Utilization review organization” means an entity that conducts utilization review other than a health carrier performing a review for its own health benefit plans.”

SECTION 7. Section 432E-5, Hawaii Revised Statutes, is amended to read as follows:

“§432E-5 Complaints and appeals procedure for enrollees. (a) A ~~managed care plan~~ health carrier with enrollees in this State shall establish and maintain a procedure to provide for the resolution of an enrollee’s complaints and internal appeals. The procedure shall provide for expedited internal appeals under section 432E-6.5. The definition of medical necessity in section 432E-1.4 shall apply in a ~~managed care plan’s~~ health carrier’s complaints and internal appeals procedures.

(b) The ~~managed care plan~~ health carrier shall at all times make available its complaints and internal appeals procedures. The complaints and internal appeals procedures shall be reasonably understandable to the average layperson and shall be provided in a language other than English upon request.

(c) A ~~managed care plan~~ health carrier shall decide any expedited internal appeal as soon as possible after receipt of the complaint, taking into account the medical exigencies of the case, but not later than seventy-two hours after receipt of the request for expedited appeal.

(d) A ~~managed care plan~~ health carrier shall send notice of its final internal determination within sixty days of the submission of the complaint to the enrollee, the enrollee’s appointed representative, if applicable, the enrollee’s treating provider, and the commissioner. The notice shall include the following information regarding the enrollee’s rights and procedures:

- (1) The enrollee’s right to request an external review;
- (2) The ~~sixty-day~~ one hundred thirty day deadline for requesting an external review;
- (3) Instructions on how to request an external review; and
- (4) Where to submit the request for an external review.

In addition to these general requirements, the notice shall conform to the requirements of section 432E-E.”

SECTION 8. Section 432E-6.5, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“§432E-6.5 Expedited internal appeal, when authorized; standard for decision.”

SECTION 9. Section 432E-6.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An enrollee may request that the ~~[following]~~ internal appeal under section 432E-5 be conducted as an expedited ~~[appeal:~~

- (1) ~~The internal review under section 432E-5 of the enrollee’s complaint; or~~
- (2) ~~The external review under section 432E-6 of the managed care plan’s final internal determination.]~~ appeal.

If a request for expedited appeal is approved by the ~~[managed care plan or the commissioner,]~~ health carrier, the appropriate ~~[review]~~ internal appeal shall be completed within seventy-two hours of receipt of the request for expedited appeal.”

SECTION 10. Section 432E-6, Hawaii Revised Statutes, is repealed.

SECTION 11. The insurance commissioner shall submit a report to the legislature no later than twenty days prior to the convening of the 2012 regular session on the implementation of this Act including the names of all independent review organizations contracted by the State pursuant to section 432E-L, Hawaii Revised Statutes, and data on the number of requests for external review and outcomes of external reviews as maintained by each independent review organization pursuant to section 432E-K(b), Hawaii Revised Statutes.

SECTION 12. The insurance commissioner shall assist the department of human services and the Hawaii employer-union health benefits trust fund in compiling data relating to each entity’s own administrative review process comparable to that maintained by independent review organizations pursuant to section 432E-K(b), Hawaii Revised Statutes, and submitting a report of the data and findings to the legislature no later than twenty days prior to the convening of the 2012 regular session. The report submitted pursuant to this section shall include a comparison between outcomes in the review processes maintained by the department of human services and Hawaii employer-union health benefits trust fund, respectively, and outcomes of the review processes of independent review organizations, as well as an analysis of whether or not consumers would have achieved better access to health care services under a review process maintained by an independent review organization.

SECTION 13. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 14. This Act shall be construed at all times in conformity with the federal Patient Protection and Affordable Care Act, Public Law No. 111-148. If any provision of this part is interpreted to violate the Patient Protection and Affordable Care Act, the commissioner is authorized to adopt by emergency rule-making procedures, any rules as necessary to conform the provisions and procedures of this part with the Patient Protection and Affordable Care Act.

SECTION 15. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 17. This Act shall take effect on June 30, 2011; provided that if the United States Department of Health and Human Services by rule or other written guidance extends the time period for the State's existing external review process under section 432E-6, Hawaii Revised Statutes, to any later date during 2011, then the effective date of this Act shall be the sooner of the end date of the transition period or January 1, 2012; provided further that if the external review requirements of the federal Patient Protection and Affordable Care Act of 2010 are held unconstitutional by the United States Supreme Court, this Act shall be repealed as of the date that the United States Supreme Court issues its opinion and chapter 432E, Hawaii Revised Statutes, shall be reenacted in the form in which it existed as of the day before the United States Supreme Court issued its decision.

(Approved July 12, 2011.)

Notes

1. Prior to amendment "the" appeared here. "An" should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 231

H.B. NO. 1505

A Bill for an Act Relating to State Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii's economy is still recovering from the recession that struck the United States in the latter half of 2008. A weak economy severely reduced all forms of revenue collected by the State. Because of its revenue shortfall, the State has found it difficult to construct new infrastructure, including buildings and other facilities. In light of these circumstances, public-private partnerships have emerged as a promising, viable alternative model and are predicted to gain even greater prominence and popularity in the future.

Public-private partnerships offer a way to address the State's significant backlog of deferred facility maintenance and provide another tool for the department of accounting and general services to undertake sorely needed repair-and-maintenance work as well as new construction projects.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER STATE FACILITY RENOVATION PARTNERSHIP PROGRAM

§ -1 **Definitions.** As used in this chapter:

"Building lease" means a contract between the department and private investor in which the private investor conveys an improved facility to the department for a specified period of time.

"Department" means the department of accounting and general services.

“Development agreement” means an agreement between the State and a private investor which, at a minimum, includes:

- (1) A description of the work to be done;
- (2) The sale price for the facility;
- (3) The duration of the agreement;
- (4) The roles and responsibilities of the department and the private investor; and
- (5) The terms and conditions for the ground lease and building lease.

“Facility” means property under the management and control of the department that may contain land, buildings, or both.

“Ground lease” means a lease of land executed between the State and private investor pursuant to which the private investor will renovate the existing facility, provide improvements, or construct a new building or buildings on a specified property.

“Private investor” means a non-governmental entity.

§ -2 State facility renovation partnership program; established. (a) There is established the state facility renovation partnership program to be administered by the department. The program shall include all transactions, including land, improvements, or both.

(b) The department shall conduct a comprehensive review of all state office facilities and shall compile a list of priority facilities situated on state-owned land that it deems best suited for the state facility renovation partnership program.

(c) The department may enter into a development agreement with any private investor for the sale of a priority facility identified in subsection (b) to the private investor; provided that the development agreement contains the following requirements:

- (1) The State shall sell the facility to the private investor, who shall:
 - (A) Renovate, improve, or construct for the State a facility, pursuant to a ground lease, and may maintain the facility; and
 - (B) Lease the facility to the State, pursuant to a building lease;
- (2) The land upon which the facility rests shall not be sold to the private investor; provided that the land may be leased at a nominal rate to the private investor for a term that would, at a minimum, allow the private investor to recover the capital investment that has been made to the facility, including depreciation; and
- (3) The State shall have the option of purchasing the facility from the private investor for the remaining balance of the debt service costs incurred by the private investor at any time; provided that the ground lease shall terminate concurrently.

(d) There is established the state facility renovation partnership special fund in the state treasury to be administered by the department and into which all funds derived from the state facility renovation partnership program shall be deposited. Funds in the special fund shall be used solely for the purposes of the state facility renovation partnership program.

(e) The department shall establish rules pursuant to chapter 91 to implement the purposes of this chapter.

(f) In the event of any conflicts between the provisions of this chapter and chapter 171, this chapter shall control; otherwise, the provisions of chapter 171 shall apply.”

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved July 12, 2011.)

ACT 232

S.B. NO. 1511

A Bill for an Act Relating to Aquaculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that direct leasing of public lands has been a cornerstone for building a successful commercial aquaculture industry in the State. Currently, aquaculture leases have a statutory limit of thirty-five years, with no option for renewal, whereas state non-agricultural park leases have a maximum term of sixty-five years for experienced farmers and include the option for renewal.

Project financing and private-sector investment require sufficient lease terms for ventures to reach economic viability. Federally guaranteed loans for aquaculture enterprises are available for loan terms up to forty years, but some require applicants to have a lease with at least five years remaining past the term of the loan, thus requiring a minimum of forty-five years. Other federally guaranteed loans require a lease at least fifty per cent longer than the term of the loan which, in the case of a forty-year loan, translates to a minimum of sixty years.

The purpose of this Act is to encourage commercial aquaculture production in the State by providing favorable terms for leasing public lands.

SECTION 2. Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Disposition of public lands for airline, aircraft, airport-related, agricultural processing, cattle feed production, aquaculture, marine, maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, airport-related, agricultural, aquaculture, maritime, and maritime-related operations;
- (2) The disposition shall not exceed a maximum term of thirty-five years, except in the case of [maritime]:
 - (A) Maritime and maritime-related operations, which may provide for a maximum term of seventy years; and
 - (B) Aquaculture operations, which may provide for a maximum term of sixty-five years; provided that aquaculture operations in good standing may seek to renew a lease issued under this section and, during the lease term, may engage in supportive activities that are related to or integrated with aquaculture; and
- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the purposes of this subsection:

“Agricultural processing” means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii.

“Airport-related” means a purpose or activity that requires air transportation to achieve that purpose or activity.

“Aquaculture” means the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research, commercial, or stocking purposes, including aquaponics or any growing of plants or animals with aquaculture effluents.

“Maritime-related” means a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved July 12, 2011.)

ACT 233

H.B. NO. 1405

A Bill for an Act Relating to Planning.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that given Hawaii’s limited natural resources, the implementation of smart growth principles, including the preservation of open space, is crucial to the sustainability of the islands. There are ten principles of smart growth:

- (1) Creating a range of housing opportunities and choices;
- (2) Creating walkable neighborhoods;
- (3) Encouraging community and stakeholder collaboration;
- (4) Fostering distinctive, attractive communities with a strong sense of place;
- (5) Making development decisions predictable, fair, and cost-effective;
- (6) Mixing land uses;
- (7) Preserving open space, farmland, natural beauty, and critical environmental areas;
- (8) Providing a variety of transportation choices;
- (9) Strengthening and directing development toward existing communities; and
- (10) Taking advantage of compact building design.

Smart growth principles are most successful when the State makes systemic changes that are consistent with these principles in community planning and development as well as land preservation. Several other states have implemented similar programs successfully. For example, Maryland has implemented a series of legislation promoting smart growth, and Florida has implemented a greenways and trails program to provide more recreational opportunities and venues.

The purpose of this Act is to promote smart growth and sustainability in the State by requiring the office of planning to develop a plan to establish a statewide system of greenways and trails.

SECTION 2. (a) The office of planning shall develop a plan to establish a statewide system of greenways and trails that shall consist of individual greenways and trails and networks of greenways and trails.

- (b) The office of planning shall:
 - (1) Coordinate with the department of transportation and the department of land and natural resources in its efforts to develop a plan for a statewide system of greenways and trails;
 - (2) Seek input from the counties regarding:

- (A) The establishment of a system of greenways and trails for each county;
 - (B) The areas in each county that may be appropriate to designate as a greenway or trail; and
 - (C) The various impediments to establishing a system of greenways and trails in each county;
- (3) Investigate and explore other jurisdictions that have established and implemented a system of greenways and trails;
 - (4) Investigate and consider, in consultation with the department of transportation, the use of transportation enhancement funds to establish and implement a statewide system of greenways and trails; and
 - (5) Establish a timeline for implementing a statewide system of greenways and trails.
- (c) The office of planning shall submit a written report to the legislature of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2012.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved July 12, 2011.)

ACT 234

H.B. NO. 680

A Bill for an Act Relating to Kakaako.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 206E-35, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed and stricken.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved July 12, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 235

H.B. NO. 1164

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that in 1992, the department of land and natural resources entered into a fifty-five year lease with the Sand Island Business Association for the Sand Island industrial park, which covers approximately seventy-four acres divided into one hundred twelve lots. The lease required the Sand Island Business Association to develop the infrastructure improvements, sublease the lots to existing lessees, and manage the Sand Island industrial park

on behalf of the department of land and natural resources. In 1999, the Sand Island Business Association completed the infrastructure improvements at a cost of more than \$41,000,000. In addition, the members of the Sand Island Business Association have invested more than \$20,000,000 in leasehold improvements to the individual lots.

As a result of these substantial investments, members of the Sand Island Business Association have expressed a strong interest in purchasing the fee interest of their leasehold lots. In addition to securing these investments, as the lease period shortens, it becomes more difficult for the members to rely on the leasehold as an asset when attempting to secure bank loans for additional improvements.

The legislature understands that the department of land and natural resources relies on the lease revenue from the Sand Island industrial park to support the operations and management of public lands programs, and that the lease revenue constitutes nearly one-half of all lease revenues supporting the special land and development fund.

The purpose of this Act is to authorize the department of land and natural resources to consider the sale or exchange of Sand Island parcels to leaseholders, and to report its findings and recommendations to the legislature.

SECTION 2. (a) The department of land and natural resources may review and consider:

- (1) The current terms of the lease between the department and the Sand Island Business Association;
- (2) Lease income to date; projected income through the twenty-five-year fixed-rent period, which ends in 2017; and estimated income after the fixed-rent period;
- (3) Whether a Sand Island parcel proposed for exchange to the department has a present and future value that is greater than or equal to that of a Sand Island parcel currently under the control of the department;
- (4) Whether a Sand Island parcel proposed for exchange to the department has a tenant that would provide an income stream that is greater than or equal to the income stream generated by a tenant of a Sand Island parcel under an existing lease;
- (5) The uses of the lease revenues to date, pursuant to section 171-19, Hawaii Revised Statutes; and any projected uses of future lease revenues; and
- (6) Any other considerations that would affect a decision to proceed with the sale or exchange of Sand Island parcels to leaseholders.

(b) The department of land and natural resources shall report to the legislature no later than twenty days prior to the convening of the regular session of 2012, on its review and consideration of the sale or exchange of Sand Island parcels to leaseholders, and its recommendations for further action.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved July 12, 2011.)

COMMITTEE REPORTS ON BILLS ENACTED

TABLES SHOWING EFFECT OF ACTS

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COMMITTEE REPORTS ON BILLS ENACTED

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HB0227	208	830, 1254	382, 934	59
HB0240	145	1137	614	76
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1. See also Senate Floor Amendment 4.
2. See also Senate Floor Amendment 7.
3. Became Law Without the Governor's Signature.
4. See also Senate Floor Amendment 8 and House Floor Amendment 8.

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Twenty-Sixth State Legislature 2011 Regular Session

Key: Am = Amended _____ = Section number
 N = New to be assigned in
 R = Repealed HRS Supplement
 Sp = Special Session

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103D-310	Am	190	206J-3, 4	Am	152
103D-407	Am	22	206J-5.5	R	152
104-24	Am	160			

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